# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1917

No. [redacted] 164

WILLIAM J. ANICKER, APPELLANT,

vs.

DAVID GUNSBURG AND SOUTHWESTERN PETROLEUM COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED MAY 12, 1916.

(25,291)

(25,291)

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**OCTOBER TERM, 1915.**

# No. 1008.

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*vs.*

DAVID GUNSBURG AND SOUTHWESTERN PETROLEUM COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.


| | Page. |
|---|---|
| Caption | *a* |
| Transcript of record from the district court of the United States for the eastern district of Oklahoma | 1 |
| Stipulation shortening record on appeal | 1 |
| Statement of proceedings in district court of Creek county, State of Oklahoma | 1 |
| Petition filed in State court | 2 |
| Petition for removal | 3 |
| Answer of defendants to plaintiff's original petition, filed March 1, 1913, in the U. S. district court | 6 |
| Order approving stipulation to shorten record on appeal | 7 |
| Amended bill of complaint | 7 |
| Exhibit A—Oil and gas mining lease, Eastman Richard to William J. Anicker, March 28, 1912 | 17 |
| A1—Application for approval of oil and gas mining lease, Eastman Richard to William J. Anicker | 23 |
| A2—Affidavits of lessor and William J. Anicker | 25 |


JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 22, 1916.

Page

Exhibit A: Bond of William J. Anicker ..... 27
B—Oil and gas mining lease, Eastman Richards to David Gunsburg and Southwestern Petroleum Co., March 20, 1912 ..... 29
C—Decision of the United States Indian superintendent ..... 42
D—Decision of the Secretary of the Interior ..... 51
E—Decision of Secretary of Interior on Anicker's motion to reconsider ..... 53
F—Opinion of Commissioner of Indian Affairs ..... 54
G—Letter, Commissioner of Indian Affairs to Secretary of the Interior, August 19, 1912 ..... 57
H (Exhibit F in original bill)—Written notice from Anicker to David Gunsburg and Southwestern Petroleum Co., November 25, 1912 ..... 58
Answer to amended bill ..... 58
Motion to strike parts of answer ..... 68
Amendment to answer of defendants to plaintiff's amended bill ..... 76
Exhibit A—Record in contest before the department ..... 78
Exhibit A to Exhibit A—Testimony before the department ..... 88
Exhibit C to Exhibit A—Report of U. S. Indian superintendent to Commissioner of Indian Affairs ..... 117
Objections of plaintiff to defendants' amendment to their answer ..... 123
Motion to strike defendants' amendment to answer to plaintiff's amended petition ..... 124
Order granting defendants leave to amend answer and sustaining plaintiff's motion to strike part of defendants' amended answer ..... 125
Final decree ..... 127
Petition for allowance of appeal ..... 130
Order allowing appeal ..... 130
Assignment of errors ..... 130
Bond on appeal ..... 133
Citation, with acknowledgment of service ..... 134
Praecipe and election as to printing record ..... 135
Certificate of clerk ..... 137
Opinion, Amidon, J. ..... 138
Decree ..... 141
Petition for appeal ..... 142
Assignment of errors ..... 143
Bond on appeal ..... 145
Order allowing appeal ..... 146
Citation and service ..... 147
Praecipe for transcript of record ..... 147
Clerk's certificate ..... 149

Pleas and Proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1915, of said Court, before the Honorable William C. Hook and the Honorable John E. Carland, Circuit Judges, and the Honorable Charles F. Amidon, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
*Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.*

Be it Remembered that heretofore, to-wit: on the twenty-fifth day of May, A. D. 1914, a transcript of record, pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein William J. Anicker is Appellant and David Gunsburg and Southwestern Petroleum Company, a corporation, are Appellees, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to-wit:

(*a*)

IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF OKLAHOMA.

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PLEAS AND PROCEEDINGS BEFORE THE HONORABLE RALPH E. CAMPBELL, JUDGE OF THE DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING, IN THE FOLLOWING ENTITLED CAUSE:

**WILLIAM J. ANICKER, - - - - - *Plaintiff,***

**Equity *vs.* No. 1951**

**DAVID GUNSBURG, and SOUTHWESTERN PETROLEUM COMPANY, a Corporation, - - - - - - *Defendants.***

---

**WILLIAM J. ANICKER, - - - - - *Appellant,***

***vs.***

**DAVID GUNSBURG, and SOUTHWESTERN PETROLEUM COMPANY, a Corporation, - - - - - - *Appellees.***

---

*In the District Court of the United States for the Eastern District of Oklahoma.—William J. Anicker, Plaintiff*, v. *David Gunsburg, and Southwestern Petroleum Company, a Corporation, Defendants.*—Equity No. 1951.

**Stipulation Shortening Record on Appeal.**

In order to shorten the record on appeal the parties, through their respective counsel of record, agree that in lieu of copying those parts of the record hereinafter mentioned, this stipulation shall be substituted therefor, and made a part of the record on appeal in this case. *It is agreed:*

*First.*

That this suit was commenced by the plaintiff in the District Court of Creek County, Oklahoma, on the 17th day of January, 1913, on which day plaintiff filed his original petition making David Gunsburg and Southwestern Petroleum

Company defendants; that summons was duly issued and served on both defendants; that defendants, on the 1st day of February, 1913, before they were required by the laws of Oklahoma, or the Rules of the said State Court, to answer or plead to the plaintiff's petition or complaint, filed their verified petition in the said State Court for the removal of said suit into this court, this being the United States District Court in the District in which said suit was pending, and Creek County being in the Eastern Federal Judicial District of Oklahoma; that the defendants filed with their removal petition the bond as required by section 29 of "The Judicial Code;" that written notice of said petition and bond for removal was given to the plaintiff prior to the filing of the same; that a certified copy of the entire record in said suit in the said State Court was entered and lodged in this court on the 12th day of Feb., 1913, and all things done necessary to the due and timely removal of said suit from the State Court into this court.

*Second.*

That, except as hereinafter set forth, plaintiff's petition filed in this suit in the State Court contains the same statements, allegations and prayer contained in plaintiff's amended petition filed in this court on the 30th day of Sept., 1913, and had attached thereto and made a part thereof the same exhibits attached to and made a part of plaintiff's said amended petition, and it is agreed that the only substantial differences between the original petition and the amended petition are as follows:

In addition to the allegations in the fourth paragraph of the amended petition, the original petition, in the fourth paragraph thereof, alleged:

> "That at the time when plaintiff took his lease from said Eastman Richard, he was not aware that said Eastman Richard had previously made a conflicting lease to the defendants, Gunsburg and the Southwestern Petroleum Company, and was not aware of any facts charging him with notice or knowledge of the existence of said lease.
>
> That on, to-wit, said March 28th, 1912, said Eastman Richard stated to the plaintiff, Anicker, that he had leased the E2 of the NE4 of said Section 5, being eighty acres, to other parties, but that he had not leased the W2 of said NE4 to anybody by any lease then existing; that thereupon, using the prudence and diligence that should be used by a reasonably careful man, the plain-

tiff examined the records in the office of the United States Indian Superintendent at Muskogee, and there found that said lease so made to said Funk and Riter covering the E2 of the NE4 had been filed in said office, but there was no lease filed to the W2 of the NE4; that thereupon plaintiff caused investigation to be made in the office of the Register of Deeds for Creek County, Oklahoma, and found no lease of record there covering said W2 of the NE4."

Also, in addition to the allegations and Acts of Congress and laws set forth in paragraph five of the amended petition, paragraph five of the original petition contains the following:

"By Section 21 of the Act of Congress dated June 16, 1906, and commonly known as the Enabling Act, it is provided as follows:

> ' * * * and all laws in force in the Territory of Oklahoma at the time of the admission of said State into the Union shall be in force throughout said State except as modified or changed by this Act or by the Constitution of the State, and the laws of the United States not locally inapplicable shall have the same force and effect within said State as elsewhere within the United States'."

Also, in addition to the allegations contained in paragraph seven of the amended petition, paragraph seven of the original petition alleges that—

"while said leases were pending before the United States Indian Superintendent for his recommendation as to which should be approved by the Secretary of the Interior, said Superintendent did require that the plaintiff, Anicker, pay an additional Four Hundred Dollars as bonus to said lessee, Eastman Richard, as a condition precedent to the approval of said lease to the plaintiff, in accordance with which requirement the plaintiff did then and there pay into the office of said United States Indian Superintendent said further sum of Four Hundred Dollars, making thereby a total of Eight Hundred Dollars paid by plaintiff as a bonus for said lease."

*Third.*

REMOVAL PETITION.

Omitting the caption and verification, the defendants' petition filed in the State Court to remove this suit to this court is as follows:

"Come now your petitioners, David Gunsburg and Southwestern Petroleum Company, defendants above named, by their attorneys and counsel, Robert J. Boone, George S. Ramsey and C. L. Thomas, and respectfully represent and state unto this Honorable Court:

*First.* That on the 17th day of January, 1913, the above named plaintiff filed a petition in the District Court for the Twenty-second Judicial District of the State of Oklahoma for Creek County, praying for a judgment against defendants, David Gunsburg and Southwestern Petroleum Company; that the approval of the Secretary of the Interior of a certain oil and gas mining lease executed to defendants by Eastman Richard, a citizen of the Creek Tribe of Indians, be declared to be improper, and made under a mistake of law, and that an oil and gas mining lease executed to plaintiff by said Eastman Richard stand approved, and that the defendants hold their said lease, approved by the Secretary of the Interior, as trustee for the sole use and benefit of the plaintiff; also, that an accounting be taken of all the oil extracted from the leased lands by the defendants, and also that the plaintiff have personal judgment against the defendants for the amount of the value of oil so ascertained and taken; and also that the plaintiff have judgment for possession of said property, and also that the defendants, and each of them, be enjoined from interference with the plaintiff's possession, and that a receiver be appointed for said property.

*Second.* Your petitioners further aver that the time has not elapsed wherein these petitioners are allowed, under the practice and laws of the State of Oklahoma, and the rules of this court, to properly plead, demur or answer said petition of the plaintiff.

*Third.* Your petitioners further aver that this suit is a suit of a civil nature in equity, of which the District Court of the United States has original jurisdiction, arising under the Constitution and under the laws of the United States, as appears from the face of plaintiff's said petition, and petitioners aver and state that the plaintiff's said petition shows that the suit arises under the laws of the United States, and involves, as appears from the face of the said petition, the construction and application of the following laws of the United States, to-wit:

An Act of Congress of February 19, 1903 (32 Stat. L. 841), entitled, 'An Act providing for the record of deeds

and other conveyances and instruments of writing in Indian Territory, and for other purposes';

Also, section 20 of an Act of Congress approved April 26, 1906 (34 Stat. L. 137), entitled, 'An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes';

Also, section 21 of an Act of Congress approved June 16, 1906, and referred to in the plaintiff's petition, as the 'Enabling Act' (34 Stat. L. 267), which act is entitled, 'An Act to enable the people of Oklahoma and of the Indian Territory to form a Constitution and state government and be admitted into the Union on an equal footing with the original states; and to enable the people of New Mexico and Arizona to form a Constitution and state government and be admitted into the Union on an equal footing with the original states';

And, also, an Act of Congress approved March 1, 1907 (34 Stat. L. 1026), providing that 'the filing heretofore or hereafter of any lease in the office of the United States Indian Agent, Union Agency, Muskogee, Indian Territory, shall be deemed constructive notice';

Also, the construction, effect and validity of rules and regulations provided by the Secretary of the Interior under the express authority of several Acts of Congress, and particularly the Act of Congress approved May 27, 1908, entitled, 'An Act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes, and for other purposes;' and section 2 thereof, same being 35 Stat. L. 312; and section 2 of the promulgated Rules and Regulations of the Secretary of the Interior, of April 20, 1908, and the re-promulgated Rules and Regulations of June 20, 1908.

Also, the power and jurisdiction of the Secretary of the Interior of the United States to approve oil and gas mining leases executed by a full-blood citizen of the Creek Nation of Indians;

And, also involves the power of the Courts to approve or disapprove an oil and gas mining lease executed by a full-blood Creek Indian;

Also, involves the power and jurisdiction of the courts to review, or modify, or reverse, and nullify and set aside the official act of the Secretary of the Interior of the United States.

*Fourth.* Your petitioners further aver that the matter in controversy in this case exceeds, exclusive of interest and costs, the sum or value of Three Thousand ($3,000.00) Dollars, and arises under the Constitution and laws of the United States.

Your petitioners herewith offer a good and sufficient bond, as provided by law in such cases, that they will, within thirty days from the date of filing of this petition, file in said court, a transcript and copy of the record in this suit, and for payment of all costs which may be awarded by the said District Court of the United States, if said court should hold that this suit was wrongfully or improperly removed thereto.

And your petitioners pray that this court proceed no further herein; that it accept the said surety and bond, and cause the record herein to be removed unto the said District Court of the United States for the Eastern District of the State of Oklahoma, and for all of which they will ever pray.

Geo. S. Ramsey,
C. L. Thomas,
Robt. J. Boone,
*Attorneys for Defendants.*"

*Fourth.*

That on the 1st day of March, 1913, the defendants filed their answer to the plaintiff's original petition in this court, in which answer they made the same admissions, denials and averments they make in their answer filed on the 30th day of September, 1913, to the plaintiff's amended petition, and among the number of defenses set up in the original answer defendants set up therein the same defenses set forth in paragraphs 3, 5, 6, 7, 8 and 9 in their answer to the plaintiff's amended petition. The second defense set up in their original answer is as follows:

> "For further defense in their behalf, defendants say that the plaintiff's petition, or bill, as a matter of law, fails to state sufficient facts to constitute a cause of action, and shows on its face that the plaintiff cannot complain of any of the matters and facts therein set forth, nor raise any of the points of law, or questions of fact set forth therein, it appearing that the lease under which plaintiff claims has been disapproved by the Secretary of the Interior."

And, further, defendants' original answer denied that the plaintiff purchased his said lease from Eastman Richard with-

out notice of the defendants' lease, and denies all the plaintiff's allegations on the subject of actual or implied notice.

The parties hereto on this date by and through their counsel of record herewith execute this stipulation.

WILLIAM J. ANICKER, *Plaintiff*,
By J. W. ZEVELY,
J. M. GIVENS,
R. W. STOUTZ,
J. B. FURRY,
*Counsel for Plaintiff.*

DAVID GUNSBURG,
SOUTHWESTERN PETROLEUM CO.,
*Defendants.*
By GEO. S. RAMSEY,
C. L. THOMAS,
R. J. BOONE,
*Counsel for Defendants.*

The above stipulation is this day approved and ordered filed and made a part of the record for the purposes therein stated.

RALPH E. CAMPBELL,
*Judge of the District Court of the United States for the Eastern District of Oklahoma.*

Endorsed: Filed Mar. 30, 1914, R. P. Harrison, Clerk United States District Court, Eastern District Oklahoma.

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And, on the 30th day of September, A. D. 1913, the plaintiff filed his Amended Bill of Complaint, in words and figures as follows:

**Amended Bill of Complaint.**

The petition of William J. Anicker, the above named plaintiff, respectfully shows to your honor, as follows:

1. That the plaintiff, William J. Anicker, is over the age of twenty-one years and resides in Muskogee County, Oklahoma. That the defendant, David Gunsburg, is over the age of twenty-one years and resides in the City of Buffalo, State of New York. That the defendant, Southwestern Petroleum Company, is a corporation organized under the laws of the State of West Virginia, having its domicile without the State of Oklahoma, but transacting business within the State of Oklahoma.

2. That one Eastman Richard, being then and there a full-blood citizen of the Creek Nation of Indians, and then and there enrolled as such upon the rolls of the United States for the Department of Indian Affairs at Muskogee, Oklahoma, had allotted to him under then existing laws, on the 10th day of March, 1903, the following described property, to-wit:

The NE4 of Section 5, Township 17 North, Range 7 East of the Indian Meridian, in Creek County, Oklahoma.

And said Eastman Richard duly received a patent therefor and at the time of the happening of the matters hereinafter mentioned was the fee simple owner of said property, but the control thereof was subject to the restrictions indicated by then existing Acts of Congress for the government of such Indians.

3. That on March 28, 1912, the said Eastman Richard did execute to the plaintiff, William J. Anicker, a certain oil and gas mining lease covering the W2 of the NE4 of said section 5, being a part of the property hereinabove described, a full and true copy of which oil and gas mining lease it attached hereto as "Exhibit A" and prayed to be taken as part hereof. That said lease to plaintiff, Anicker, was executed in quintuplicate and four parts thereof were by plaintiff filed in the office of the United States Indian Superintendent at Muskogee, Oklahoma, on March 30th, 1912, for approval, and the fifth part filed for record in the office of the register of deeds in and for Creek County, Oklahoma, on April 1, 1912. That at the time of the execution of said lease by said Eastman Richard, to-wit, on March 28, 1912, the plaintiff paid the said Eastman Richard, in cash, the sum of Fifty ($50.00) Dollars and agreed to pay to the cashier of Union Agency at Muskogee for account of said lessor the further sum of Three Hundred Fifty ($350.00) Dollars, the amount of Four Hundred ($400.00) Dollars being the bonus or consideration for said lease then and there agreed on between said Eastman Richard and the plaintiff. That thereafter, being advised by the United States Indian Superintendent that the appraised value of said lease at the time of its date was eight hundred dollars, the plaintiff did deposit with the cashier at Union Agency, at Muskogee, for account of the lessee, the sum of Seven Hundred Fifty ($750.00) Dollars to make the total amount of said bonus the sum of eight hundred dollars.

4. That on the 20th day of March, 1912, said Eastman Richard did sign to the defendants, David Gunsburg and Southwestern Petroleum Company, a similar lease covering the same property leased to plaintiff, that is to say, the W2 of the NE4 of said section 5, a copy of which lease is hereto

annexed as Exhibit "B". Said defendants, Gunsburg and the Southwestern Petroleum Co., withheld their lease and refrained from filing the same until April 5, 1912.

5. By sections 670 and 671 of Mansfield's Digest of the Statutes of Arkansas, extended into the Indian Territory by Act of Congress of February 19, 1903, it is provided:

> "*Sec. 670.* Every deed, bond, or instrument of writing affecting the title in law or equity to any property, real or personal, within this state, which is or may be required by law to be acknowledged, or proved and recorded, shall be constructive notice to all persons from the time the same is filed for record in the office of the recorder of the proper county; and it shall be the duty of such recorder to indorse, on every such deed, bond, or instrument, the precise time when the same is filed for record in his office.
>
> *Sec. 671.* No deed, bond, or instrument of writing, for the conveyance of any real estate, or by which the title thereto may be affected in law or equity, hereafter made or executed, shall be good or valid against a subsequent purchaser of such real estate for a valuable consideration, without actual notice thereof; * * *."

By the Act of Congress of April 26, 1906, it is provided as follows:

> "*Sec. 20.* That after the approval of this Act all leases and rental contracts, except leases and rental contracts for not exceeding one year for agricultural purposes for lands other than homesteads, of full-blood allottees of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes be in writing and subject to approval by the Secretary of the Interior and shall be absolutely void and of no effect without such approval; *Provided*, that allotments of minors and incompetents may be rented or leased under order of the proper court; *Provided further*, that all leases entered into for a period of more than one year shall be recorded in conformity to the law applicable to recording instruments now in force in said Indian Territory."

By section 1 of the Act of Congress dated June 16, 1906, and commonly known as the Enabling Act, it is provided as follows:

> "That the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma and the Indian Territory, as at present described,

> may adopt a constitution and become the State of Oklahoma, as hereinafter provided: *Provided*, that nothing contained in the said constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property or other rights by treaties, agreement, law or otherwise, which it would have been competent to make if this act had never been passed."

By section 2 of the Schedule of the Constitution of the State of Oklahoma it is provided as follows:

> "All laws in force in the Territory of Oklahoma at the time of the admission of the state into the Union, which are not repugnant to this Constitution, and which are not locally inapplicable, shall be extended to and remain in force in the State of Oklahoma until they expire by their own limitation or are altered or repealed by law."

Wherefore, plaintiff is advised, and so charges, that said above quoted provision from Mansfield's Digest is still in force in that part of the State of Oklahoma which was formerly the Indian Territory and applies to this case. If said sections of Mansfield's Digest are not applicable hereto, plaintiff charges that it is provided by section 1195 of the Compiled Laws of Oklahoma of 1909, as follows:

> "*Sec. 1195.* Valid against third persons only when recorded. * * * Except as hereinafter provided, no acknowledgment or recording shall be necessary to the validity of any deed, mortgage, or contract relating to real estate as between the parties thereto; but no deed, mortgage, contract, bond, lease, or other instrument relating to real estate, other than a lease for a period not exceeding one year and accompanied by actual possession, shall be valid as against third persons unless acknowledged and recorded as herein provided; except actual notice to such third persons shall be equivalent to due acknowledgment and recording."

Wherefore, plaintiff charges that the lease so executed by the said Eastman Richard to said defendants, Gunsburg and the Southwestern Petroleum Company, is null and void as against this plaintiff, because the same was not filed in the

office of the Register of Deeds for Creek County, Oklahoma, prior to the acquirement of said lease of March 28, 1912, by the plaintiff.

6. By the Act of Congress of March 1, 1907, it is provided as follows (34 Stat. at L., 1026):

> "The filing heretofore or hereafter of any lease in the office of the United States Indian Agent, Union Agency, Muskogee, Indian Territory, shall be deemed constructive notice."

Plaintiff is advised that such filing herein provided for operates as constructive notice only from the time of filing of said lease in the office of the United States Indian Superintendent, and that the same has no effect as notice before the time of such filing.

Wherefore, plaintiff is advised, and so charges, that said lease to said David Gunsburg and the Southwestern Petroleum Company, though dated anterior to that to the plaintiff, is null and void as against the plaintiff, because the same was not filed until April 5, 1912, after the plaintiff's said lease was filed in the same office.

Plaintiff is advised and so charges that because he had no notice of the existence of said lease to David Gunsburg and the Southwestern Petroleum Company, the rights of the plaintiff as lessee of said property are prior and superior to the rights of the defendants, Gunsburg and Southwestern Petroleum Company, and should be protected as such. Plaintiff avers that the Secretary of the Interior has found that plaintiff has in all respects complied with all the requirements of law in and about the making of said lease and that said plaintiff is able, capable and willing to perform any and all obligations incumbent upon him as lessee thereunder, as he now offers to do so.

7. Plaintiff alleges that under the law it was necessary that said leases be submitted to and have the approval of the Secretary of the Interior of the United States; while said leases were pending before the United States Indian Superintendent for his recommendation as to which should be approved by the Secretary of the Interior a contest arose between said respective lessees as to which of the two leases should be approved.

Said contest came on for hearing before the United States Indian Superintendent at Muskogee, Oklahoma, to-wit: on May 14, 1912, when testimony was taken and the case argued by counsel and said matter taken under advisement.

That the United States Indian Superintendent did on the 1st day of July, 1912, make a decision in said contest and advised the approval of the lease to the defendants David Gunsburg and the Southwestern Petroleum Company, and a copy of his recommendation is hereto attached as Exhibit "C" and prayed to be taken as part thereof.

8. That thereupon the plaintiff, Anicker, in accordance with the practice of said Department, took an appeal to the Commissioner of Indian Affairs from the recommendation of said United States Indian Superintendent, and said Commissioner of Indian Affairs concurred in the recommendation of the United States Indian Superintendent.

9. That thereupon said plaintiff, Anicker, took an appeal to the Secretary of the Interior, who after hearing the argument of counsel, rendered a decision on September 24, 1912, a copy of which decision is attached hereto as "Exhibit D."

10. That being advised that the decision of the said Secretary of the Interior was erroneous the plaintiff, Anicker, applied for a rehearing before the said Secretary of the Interior, and said rehearing before said Secretary was decided by an opinion dated December 9, 1912, which was received in the office of the United States Indian Superintendent at Muskogee, Oklahoma, December 16, 1912, a true copy of which is attached hereto as Exhibit "E."

11. Plaintiff avers that in and by said contest proceedings in the office of the United States Indian Superintendent and in the offices superior thereto including the office of the Secretary of the Interior of the United States, the facts hereinabove stated in numbered paragraphs three and four of this petition were found by said Secretary to be true, but by an error of law as hereinafter stated the said lease to defendants Gunsburg and the Southwestern Petroleum Company was erroneously approved and the lease to the plaintiff Anicker erroneously disapproved.

12. That in and by said decision of the Secretary of the Interior it was determined that plaintiff was a fit lessee and a bona fide purchaser of said lease, and said action approving defendants' lease and not approving that to plaintiff was based solely upon the error of law into which the Secretary fell in holding that defendants' lease was entitled to approval because it bore date of March 20, 1912, and the lease of plaintiff bore date of March 28, 1912, notwithstanding plaintiff's lease was filed in the proper filing and recording offices long prior

to the time plaintiff had any notice of the existence of the lease to the defendants. In adjudicating said matter the Department erred in the following particulars:

(a) In declaring that the lease of the defendants Gunsburg and the Southwestern Petroleum Company should be approved because it was first in point of date, and prevailed over the lease to plaintiff, notwithstanding plaintiff's lease was taken in good faith and without notice of defendants' lease and plaintiff's lease was first filed in the office of the United States Indian Superintendent.

(b) In declaring that the lease of the defendants Gunsburg and the Southwestern Petroleum Company should be approved because it was first in point of date and prevailed over the lease to plaintiff, notwithstanding plaintiff's lease was taken in good faith and without notice of defendant's lease and plaintiff's lease was first filed in the office of the Register of Deeds of Creek County.

(c) In construing the following regulation of the Secretary of the Interior:

> "All leases shall be in quadruplicate and with the papers required shall be filed within thirty days from and after date of execution by the lessor, with the United States Indian Agent at Union Agency, Muskogee, Oklahoma,"

to be in effect a permission to lessees to withhold their leases for a period of thirty days from the date of their execution during which time subsequent lessees in good faith may not acquire any superior right, thereby making such regulation conflict with and override the laws of Congress which declare that the filing of any lease in the office of the United States Indian Superintendent shall be constructive notice.

(d) In construing the following regulation of the Secretary of the Interior:

> "All leases shall be in quadruplicate and with the papers required shall be filed within thirty days from and after date of execution by the lessor, with the United States Indian Agent at Union Agency, Muskogee, Oklahoma."

to be in effect a permission to lessees to withhold their leases for a period of thirty days from the date of their execution during which time subsequent lessees in good faith may not acquire any superior right, thereby making such regulation conflict with and override the laws of Congress which declare that such leases shall be void as against subsequent leases

until filed for record in the office of the register of deeds for the county where the land is situate.

(e) In holding that the time of filing of the lease in the office of the United States Indian Superintendent is not material if done within thirty days.

(f) In holding that the fact, and the time, of filing of the lease in the office of the register of the county wherein the land is situated is not material at all.

(g) By holding, in effect, that defendants Gunsburg and the Southwestern Petroleum Company are entitled to thirty days after the taking of their lease to file the same in the office of the United States Indian Suprintendent, during which thirty days plaintiff can not acquire bona fide rights that will prevail over those of defendants, notwithstanding the plaintiff was an innocent purchaser of his lease for value and was diligent in filing his lease promptly in the office of the said United States Indian Superintendent before defendants filed their lease therein.

(h) By holding, in effect, that defendants, Gunsburg and the Southwestern Petroleum Company are entitled to thirty days after the taking of their lease to file the same in the office of the register of deeds, during which thirty days plaintiff can not acquire bona fide rights that will prevail over those of defendants, notwithstanding the plaintiff was an innocent purchaser of his lease for value and was diligent in filing his lease promptly in the office of the register of deeds for Creek County, Oklahoma, before defendants filed their lease therein.

(i) In failing to approve Anicker's lease upon the facts found by the Secretary and in approving the lease to the defendants.

13. That since said decision of the Secretary of the Interior approving said lease to them, the defendants Gunsburg and the Southwestern Petroleum Company have entered upon said property covered by said lease and have caused to be drilled upon said property two certain wells for extracting oil from said land, and are now drilling three more wells thereon, and have threatened to drill still further wells and have erected five additional rigs preparatory to drilling five more wells thereon. That the first of said wells to begin producing began producing oil on November 30, 1912, and the second of said wells began producing oil on December 14, 1912, and between the two of them they have produced, and

the defendants have converted to their own use, approximately 20,000 barrels of crude oil taken therefrom, of the value of about $16,000.00. Said two wells will continue to produce oil at the rate of about one thousand barrels per day, of the value of about $800.00 per day, and as soon as said additional wells now being drilled, and those for which rigs have been erected, begin to produce oil, the daily output of oil from said leasehold will be greatly augmented.

That said defendants, unless prevented, will continue to extract and sell large quantities of oil from said land and convert the proceeds thereof to their own use and remove the same beyond the jurisdiction of this court and that thereby the value of plaintiff's interest in said land will be greatly diminished, and destroyed, to the great and irreparable damage to plaintiff.

Plaintiff further shows that on November 25, 1912, he gave written notice to the defendants David Gunsburg and the Southwestern Petroleum Company, by registered mail, of which Exhibit "F" hereto attached is a true copy, but notwithstanding said notice said defendants have continued their operations upon said property as above stated.

14. It is not to the interest of the lessor of said property or of those really entitled to the leasehold thereon to stop the production of oil therefrom by inaction, because the wells drilled and to be drilled on surrounding property will drain the oil from under this property; it is to the interest of the lessor and the parties really entitled to the leasehold thereon, that the same be operated and as much oil extracted therefrom as is reasonably practicable, but inasmuch as the defendants Gunsburg and the Southwestern Petroleum Company are not legally or equitably entitled to said lease, which in equity and good conscience belongs to plaintiff, it is unjust and unequitable that they be permitted to extract said oil therefrom and sell it and dispose of the proceeds and remove the same from the jurisdiction of this Honorable Court. Plaintiff avers that it is necessary therefore that a receiver should be appointed to continue said oil operations and extract said oil and sell the same and hold the proceeds subject to the orders of this court in this cause.

15. Plaintiff attaches hereto the following papers which are the following exhibits: Exhibit A One being the application for approval of the Anicker lease, Exhibit A Two being the affidavit of Indian lessor and the affidavit of lessee, Exhibit A Three being the bond of the plaintiff Anicker. Also Exhibit B One being the application for the approval of the

lease to David Gunsburg and the Southwestern Petroleum Company, Exhibit B Two being the affidavit of lessor and affidavit of one Roy Scales on behalf of the lessee, Exhibit B Three being the bond by said last named lessees with certificate of qualification of the Surety Company attached thereto, and Exhibit B Four being the evidence showing the authority of officers to execute bonds and accompanying papers. Plaintiff also attaches hereto as Exhibit F the written opinion of the Commissioner of Indian Affairs addressed to the Secretary of the Interior under date of August 6th, 1912. Also Exhibit G being the letter of the Commissioner of Indian Affairs to the Secretary of the Interior dated August 19, 1912, transmitting the said leases to the Secretary of the Interior.

Wherefore plaintiff prays that the defendants David Gunsburg and the Southwestern Petroleum Company be made parties defendant to this petition, and that process of summons issue against them according to the usual process of this court.

Plaintiff prays that upon the hearing of this cause this Honorable Court will declare that the approval of the lease to the defendants Gunsburg and the Southwestern Petroleum Company was improper and made under a mistake of law and that the said lease to the plaintiff stands approved and that the defendants Gunsburg and the Southwestern Petroleum Company hold said lease so approved to them as trustees for the sole use and benefit of this plaintiff; that an accounting be taken of all the oil extracted from said leased land before the filing of this suit, and also after the filing of this suit until possession of said property be delivered to plaintiff, and that plaintiff have personal judgment against said defendants, Gunsburg and the Southwestern Petroleum Company, *in solido* for the amount of the value of said oil so ascertained; that the plaintiff may be put in possession of said property and the defendants and each of them enjoined from interference with the possession of the plaintiff therein; that pending the determination of this cause Your Honor will appoint a suitable receiver or receivers to take possession of said property and all oil, and the proceeds of all oil taken from said land, wherever the same may be found, and that said receiver may be authorized and directed to operate said lease, and to extract and dispose of said oil and to hold the proceeds subject to the orders and decrees of this Honorable Court.

Plaintiff prays for such other or further relief as he may be entitled to in the premises and as may be just and equitable.

J. W. ZEVELY,
J. M. GIVENS,
R. W. STOUTZ,
J. B. FURRY,
E. C. MOTTER,
*Attorneys for Plaintiff.*

The exhibits referred to as attached to this amended bill are attached to the original bill in this case and are prayed to be deemed to be attached hereto.

J. W. ZEVELY *et al.*,
*Attorneys for Plaintiff.*

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## EXHIBIT A.

Form A. Series 1908.—Approved April 20, 1908. Amended February 6, and June 29, 1911.

Office of Indian Affairs Received Jul. 22, 1912. File 73380.

Received Union Agency, Mar. 30, 1912. No. 18650.

P & R NW

## OIL AND GAS MINING LEASE UPON LAND SELECTED FOR ALLOTMENT.

Creek Nation, Oklahoma.

*The indenture of lease*, Made and entered into in quadruplicate on this 28th day of March, A. D. 1912, by and between Eastman Richard of Pierce, Okla., enrolled as a full-blood citizen of the Creek Nation, Roll No. 7664, party of the first part, hereinafter designated as lessor, and William J. Anicker of Muskogee, Okla., party of the second part hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908 (35 Stat. L. P. 312) *Witnesseth:*

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations, and conditions hereinafter contained, and hereby agreed to be paid, observed, and performed by the lessee, does hereby demise, grant, lease, and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the

oil deposits and natural gas in or under the following described tract of land, lying and being within the county of Creek and State of Oklahoma, to-wit: The west half of northeast quarter (W2 of NE4) 81.18 acres of section 5, township 17 N. range 7 E. of the Indian Meridian, and containing 80 acres, more or less, with the exclusive right to prospect for, extract, pipe, store, and remove oil and natural gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent. of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance, to be calculated from the date of commencement of utilization: *Provided*, however, in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty, which will become effective as a part of this lease: *Provided, further*, That in case of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which can not profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desires to retain gas producing privileges, the lessee shall pay a rental of

one hundred dollars per annum, in advance, calculated from date of discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty-five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to the Superintendent, Union Agency, Muskogee, Oklahoma, for lessor, as advance annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance for the first and second years; thirty cents per acre per annum, annually, in advance, for the third and fourth years; seventy-five cents per acre per annum, annually, in advance, for the fifth year; and one dollar per acre per annum, annually, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year and

thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligation to pay such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose, to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled, or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirement shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in his occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control, nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall se-

curely plug the same so as effectually to shut off all water from the oil-bearing stratum, or in the manner required by the laws of the State of Oklahoma.

6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in operating said property, and also upon all of the unsold oil obtained from the land herein leased as security for payment of said royalty.

7. The lessee may at any time, by paying to the Indian Superintendent all amounts then due as provided herein and the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder: *Provided*, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office: *Provided, further*, in event restrictions are removed from all leased premises, the lessee may surrender all the undeveloped portion thereof, by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: *Provided, however*, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right, at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further

bond or bonds as may be required by said Secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the United States Indian Superintendant shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the First National Bank of Muskogee, Okla., or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors, and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

Attest: Eastman Richard (Seal)
..... William J. Anicker (Seal)

Two witnesses to execution by lessor:
J. B. Furry,
P. O. Muskogee, Okla.
Edwin C. Motter,
P. O. Muskogee, Okla.

Two witnesses to execution by lessee:
H. Van Smith, P. O., Muskogee, Okla.
Chas. N. Eubanks, P. O., Muskogee, Okla.

Wm. J. Anicker.

*State of Oklahoma, County of Muskogee*—ss.

.....before me, a notary public, in and for said county and state, on this 28th day of March, 1912, personally appeared Eastman Richard to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Robert A. Zebold, Notary Public.

(Seal) (My commission expires Jan. 5th, 1916.)

Department of the Interior,
United States Indian Service, Union Agency,
Muskogee, Okla., Jul. 18, 1912.

The within lease is forwarded to the Commissioner of Indian affairs with recommendation that it be disapproved. See my report of even date. Dana H. Kelsey,

Original. United States Indian Superintendent.

Department of the Interior,
Office of Indian Affairs.
Washington, D. C., Aug. 6, 1912.

Respectfully submitted to the Secretary of the Interior, with recommendation that it be disapproved. F. H. Abbott,
Assistant Commissioner.

Department of the Interior,
Washington, D. C., Sep. 24, 1912.

Disapproved. Samuel Adams,
First Assistant Secretary of the Interior.
H.

Filed for record this 30 day of Mar. 1912, at 1 o'clock p. m. Dana H. Kelsey,
*Supt. Union Agency.*

Advance Royalty Received $12.00. By R. W. Fields, ac

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EX. A1. P & R

Form B, Series of 1908—one copy to accompany and be filed with each lease.

Office of Indian Affairs, Received Jul. 22, 1912. File 73380.
Received Union Agency Mar. 30, 1912. No. 18650.

## APPLICATION FOR APPROVAL OF OIL AND GAS MINING LEASE.

*To the Secretary of the Interior:*

William J. Anicker, of Muskogee, Oklahoma, hereinafter designated as the applicant, hereby applies to have approved the accompanying lease embracing 80 acres of land allotted to Eastman Richard, of Pierce, Oklahoma, a citizen of the Creek Nation, and agrees that this application shall be considered a part of the lease so described.

The applicant solemnly swears that the lease, for which approval is requested, is taken in good faith in the interest and for the exclusive benefit of the applicant, and not for speculation or transfer, or as agent for, or in the interest or for the benefit of, any other person, corporation, or association; that no other person, corporation, or association has any interest, present or prospective, directly or indirectly, therein, and that there is no understanding or agreement, expressed or implied, by which the land leased, or any interest in or under the lease by working or drilling contract or otherwise, is to be used, sublet, assigned, or transferred, without the consent of the Secretary of the Interior, first obtained, but that it is taken for the purpose of operation and development under the direction, supervision, and control of the applicant, except as herein stated.

In addition to the leases in the name of the applicant for which approval is requested, the affiant solemnly swears that the applicant is not interested, either directly or indirectly, in oil or gas mining leases or lands in the Five Civilized Tribes, except with the following named persons, corporations, or associations, and that the aggregate of all these interests, together with the leases held by the applicant alone, is not more than 4,800 acres:

| *Names of person, corporation, or association with whom applicant is interested* | *Postoffice Address* |
|---|---|
| H. Van Smith, | Muskogee, Oklahoma. |

The applicant hereby states that his general business experience for the past five years has been as follows: Farm Lands and oil.

The applicant's financial condition at this time is Good.
JL

It is further stated that the applicant's resources are as follows: about $60,000.00 invested in farm lands and about

$8,000.00 in cash and that he has available at least $8,000.00 for the development of the land covered by said lease.

Where the applicant is a corporation, it hereby shows that at this time it has $..... paid up capital and $..... in its treasury available for oil and gas operations. (1)

It is hereby agreed that on the issue, transfer, or cancellation of stock of corporations, or changes in officers, prompt reports will be made thereof as required by the regulations.

The books and accounts of the applicant covering the business to be carried on under this lease, if approved, will be kept at Muskogee, Okla., in the custody of applicant.

The applicant agrees that the money deposited with the United States Indian Superintendent as the first year's advance royalty under said lease shall be and become the property of the lessor if the lease be disapproved because of the lessee's failure to meet the requirements of the law or the regulations of the Department of the Interior applicable thereto or because of any other fault or defect chargeable to the lessee.

References: (2)

F. C. Hubbard, Treas., P. O. Muskogee, Okla.
Guy Bowman, P. O. Muskogee, Okla.
L. R. Roach, P. O. Muskogee, Okla.

Executed this 29th day of March, 1912, at Muskogee, Oklahoma. William J. Anicker.

Before me a notary public in and for the county of Muskogee, State of Oklahoma, personally appeared William J. Anicker who, being first duly sworn according to law, depose and say that the foregoing application was signed by proper authority in good faith for the purpose therein stated, and that the statements made therein are true as he very believes.

(L. S.) (Seal) Robert A. Zebold, Notary Public.

My commission expires Jan. 5th, 1916.

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1. Corporations shall furnish with their first application the additional financial showing required by the regulations.

2. Bank references are preferred.

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EX. A2. P & R

Form D—Series 1908.

Office of Indian Affairs. Received Jul. 22, 1912. File 73380.

Received Union Agency. Mar. 30, 1912. No. 18650.

## AFFIDAVITS OF INDIAN LESSOR AND LESSEE, PROOF OF BONUS, AND NO DEVELOPMENT.

(Must in all cases be properly executed and accompany Lease when filed.)

*State of Oklahoma, County of Muskogee*—ss.

I, Eastman Richard, of Pierce, Oklahoma, being first duly sworn according to law, state upon oath that I am more than 41 years of age, and that under date of March 28th, 1912, I made an Oil and Gas Mining Lease with William J. Anicker, covering 80 acres; that said lease was read over and fully explained to me at the time that I signed same, and I understand the nature, contents, and effect thereof; that I made said lease in good faith for the purposes therein specified, and now join in the application of the lessee for its approval by the Secretary of the Interior.

I further swear that, other than the terms of the lease described, the only contract, agreement, or understanding between myself and the lessee covering additional payments made or to be made as bonus money, or any other consideration, is as follows:

Four Hundred and No/100 dollars ($400.00) as bonus, of which amount I acknowledge the receipt of $50.00, the balance, if any, payable when lease is approved, and the following additional agreement:

I further state that I have satisfied myself as to the value of this lease, and believe that the amount of bonus offered me as above indicated was reasonable and proper at the date the lease was executed.

Witnesses to Mark: Eastman Richard,

....., P. O., .....

....., P. O., .....

(Where Lessor does not speak English, interpreter must sign and be sworn to correctness of interpretation.) Lessor speaks English. .....

(Signature of Interpreter.)

Subscribed in my presence and sworn to before me this 29th day of March, 1912. In connection therewith I certify that the above affidavit was fully explained to the Indian lessor, and I am satisfied said lessor fully understands the nature of the lease referred to.

(Seal) Arthur G. Cochran a

a Affidavit of Indian lessor should be sworn to before a United States Commissioner, Indian Superintendent, District

Agent, County or District Judge, Federal judge or Clerk of Federal Court. Where leases are executed by guardians under order of Court, affidavit of lessor may be executed before a notary public.

AFFIDAVIT OF LESSEE.

I, William J. Anicker, of Muskogee, Okla., being first duly sworn according to law, state upon oath that I am the lessee or the duly authorized agent of the lessee in the above-described lease; that I know of my own personal knowledge that the only bonus to be paid for the execution of said lease, directly or indirectly, by the lessee to the lessor or any one for him is $400.00, of which $50.00 has been paid, and $350.00, payable on approval of lease, and that the other agreement is precisely as stated by the lessor above; that there have been no operations or drilling for oil or gas by the lessee or any one for him upon the said premises included in said described lease, *and that said lease will be completed under the rules of the Secretary of the Interior without unnecessary delay.*

William J. Anicker.

Subscribed and sworn to before me this 29th day of March, 1912. Robert A. Zebold,

(Seal) Notary Public.

My commission expires Jan. 5th, 1916.

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EX. A3.

Form C, Series of 1908.—To Accompany Leases Executed by Allottees of the Five Civilized Tribes.

Office of Indian Affairs Received Jul. 22, 1912 File 73380.

Received Union Agency Sep. 28, 1912. Enclosure to Dept. No. 2930.

Received Union Agency March 30, 1912. No. 18650.

Received Union Agency Oct. 3, 1912. Enclosure to No. 53911.

Office of Indian Affairs. Received Dec. 10, 1912. 125601

B O N D

*Know all men by these presents*, That William J. Anicker of Muskogee, Oklahoma, as principal, and Southwestern Surety Insurance Company of Durant, Oklahoma, as surety, are held and firmly bound unto the United States of America in the sum of Fifteen Hundred ($1500.) dollars, lawful money of the United States, for the payment of which, well and truly

to be made, we bind ourselves, and each of us, our heirs, successors, executors, or administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 29th day of March, 1912.

The condition of this obligation is such that whereas the above-bounden William J. Anicker, as principal, entered into a certain indenture of lease, dated March 28, 1912, with Eastman Richard for the lease of a tract of land described as follows: The west half (W2) of the northeast quarter (NE4) of section five (5) township seventeen north, range seven (7) east, containing 80 acres, and located in the Creek Nation, Oklahoma, for oil and gas mining purposes for the period of ten years from the date thereof and as much longer thereafter as oil or gas is found in paying quantities on said land.

Now, if the above-bounden William J. Anicker shall faithfully carry out and observe all the obligations assumed in said indenture of lease by him and shall observe all the laws of the United States, and regulations made, or which shall be made thereunder, for the government of trade and intercourse with Indian tribes, and all the rules and regulations that have been, or may be, lawfully prescribed by the Secretary of the Interior relative to leases executed by allottees of the Five Civilized Tribes, in Oklahoma, then this obligation shall be null and void; otherwise to remain in full force and effect.

Signed and sealed in the presence of—

Witnesses: (a)

H. Van Smith,
P. O., Muskogee, Oklahoma,
Edwin C. Motter, as to William J. Anicker (Seal)
P. O., Muskogee, Oklahoma.
Lena F. Austin, Southwestern Surety Insurance Company
P. O., Muskogee, Oklahoma as to M. L. Bragdon (Seal)
M. V. Stanfield, Attorney-in-fact
P. O., Muskogee, Oklahoma.

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*a* Two witnesses to all signatures 6—954

Endorsed. Copy. Department of the Interior. Bond of William J. Anicker Lessee of W2 NE4 5—17N—7E Eastman Richard, Allottee In the Creek Nation, Oklahoma, for oil and gas mining purposes, dated March 29, 1912 Washington, D. C.,....., 19.. Approved: ..... Secretary of the Interior. 6—953

PLFFS. EXHIBIT B—Etc. WH

Form A. Series 1908.—Approved April, 20, 1908. Amended February 6, and June 29, 1911.

Received Union Agency Apr. 5, 1912. Enclosure to No. 20127.

Office of Indian Affairs Jul. 22, 1912. File 73380.

## OIL AND GAS MINING LEASE UPON LAND SELECTED FOR ALLOTMENT.

Creek Nation, Oklahoma. P&R

*This indenture of lease*, Made and entered into in quadruplicate on this 20th day of March, A. D. 1912, by and between Eastman Richards, of Pierce, McIntosh County, Oklahoma, enrolled as a full-blood citizen of the Creek Nation, Roll No. 7664, party of the first part, hereinafter designated as lessor, and David Gunsburg and Southwestern Petroleum Company, a corporation, of Buffalo, New York, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908 (35 Stat. L. P. 312) *Witnesseth:*

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations, and conditions hereinafter contained, and hereby agreed to be paid, observed, and performed by the lessee, does hereby demise, grant, lease, and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the oil deposits and natural gas in or under the following described tract of land, lying and being within the county of ..... and State of Oklahoma, to-wit: The west half of northeast quarter of section 5, township 17 N., range 7 E. of the Indian Meridian, and containing 80 acres, more or less, with the exclusive right to prospect for, extract, pipe, store, and remove oil and natural gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance, to be calculated from the date of commencement of utilization: *Provided*, however, in the case of gas wells of small volume, when the rock presure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty, which will become effective as a part of this lease: *Provided, further*, That in case of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free us of gas for domestic purposes in his residence on the leased premises, provided there be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which can not profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desires to retain gas producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from date of discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty-five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to the Superintendent, Union Agency, Muskogee, Oklahoma, for lessor, as advance annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance for the first and second years; thirty cents per acre per annum, annually, in advance, for the third and fourth years; seventy-

five cents per acre per annum, annually, in advance, for the fifth year; and one dollar per acre per annum, annually, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligation to pay such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose, to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would ac-

crue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled, or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirement shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in his occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control, nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil-bearing stratum, or in the manner required by the laws of the State of Oklahoma.

6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in operating said property, and also upon all of the unsold oil obtained from the land herein leased as security for payment of said royalty.

7. The lessee may at any time, by paying to the Indian Superintendent all amounts then due as provided herein and the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability there-

under: *Provided*, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office: *Provided, further*, in event restrictions are removed from all leased premises, the lessee may surrender all the undeveloped portion thereof, by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: *Provided, however*, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right, at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or bonds as may be required by said Secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the

Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the United States Indian Superintendent shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the ..... Bank of ....., or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors, and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

Attest: Eastman Richard (Seal)

..... Southwestern Petroleum Company

George A. Forman (Seal)
President.

David Gunsburg (Seal)

Two Witnesses to execution by lessor:

Robt. J. Boone, P. O., Muskogee, Okla.
Sadie Fortson, P. O., Muskogee, Okla. (Seal)

Two witnesses to execution by lessee:

F. J. Zuidema, P. O., Buffalo, N. Y.
Donald J. Lux, P. O., Buffalo, N. Y.

*State of Oklahoma, County of Muskogee*—ss.

....before me, a notary public, in and for said county and state, on this 20th day of March, 1912, personally appeared Eastman Richard to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

(Seal) Wm. Kremer.

(My commission expires—Commission expires May 4, 1914.

Department of the Interior,
United States Indian Service, Union Agency,
Muskogee, Okla., Jul. 18, 1912.

The within lease is forwarded to the Commissioner of Indian affairs with recommendation that it be approved. See my report of even date. Dana H. Kelsey,

Original United States Indian Superintendent.

Department of the Interior,
Office of Indian Affairs.
Washington, D. C., Aug—6, 1912.

Respectfully submitted to the Secretary of the Interior, with recommendation that it be approved.

F. H. Abbott,
Assistant Commissioner.

Department of the Interior,
Washington, D. C., Sep. 24, 1912.

Approved. Samuel Adams,
First Assistant Secretary of the Interior.

Filed for record this 5 day of Apr., 1912, at 4 o'clock p. m.

Dana H. Kelsey,
Supt. Union Agency.
By R. W. Fields.

Advance Royalty Received $12.00. AC

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B1 P&R

Form B, Series of 1908—One copy to accompany and be filed with each lease.

Office of Indian Affairs Received Jul. 22, 1912. File 73380.

Received Union Agency Apr. 5, 1912. Enclosure to No. 20127.

*To the Secretary of the Interior:*

David Gunsburg and Southwestern Petroleum Co., of Buffalo, N. Y., hereinafter designated as the applicant, hereby applies to have approved the accompanying lease embracing 80 acres of land allotted to Eastman Richards, of Pierce, Oklahoma, a citizen of the Creek Nation, and agrees that this application shall be considered a part of the lease so described.

The applicants solemnly swear that the lease, for which approval is requested, is taken in good faith in the interest

and for the exclusive benefit of the applicants, and not for speculation or transfer, or as agent for, or in the interest or for the benefit of, any other person, corporation, or association; that no other person, corporatin, or association has any interest, present or prospective, directly or indirectly, therein, and that there is no understanding or agreement, expressed or implied, by which the land leased, or any interest in or under the lease by working or drilling contract or otherwise, is to be used, sublet, assigned, or transferred, without the consent of the Secretary of the Interior, first obtained, but that it is taken for the purpose of operation and development under the direction, supervision, and control of the applicants except as herein stated.

In addition to the leases in the name of the applicant for which approval is requested, the affiant solemnly swears that the applicant is not interested, either directly or indirectly in oil or gas mining leases or lands in the Five Civilized Tribes under control of the Department of the Interior, except with the following named persons, corporations, or associations, and that the aggregate of all these interests, together with the leases held by the applicant alone, is not more than 4,800 acres:

| *Names of person, corporation, or association with whom applicant is interested* | *Postoffice Address* |
|---|---|
| ..... | ..... |
| ..... | ..... |

The applicant hereby states that his general business experience for the past five years has been as follows: Entirely in the oil business. Have drilled many hundred hundred wells.

The applicant's financial condition at this time is very good. Worth jointly over $100,000.00. JL

It is further stated that the applicant's resources are as follows: large income from oil production and other resources, and that he has available at least $10,000.00 for the development of the land covered by said lease.

Where the applicant is a corporation, it hereby shows that at this time it has $..... paid up capital and $..... in its treasury available for oil and gas operations. (1)

It is hereby agreed that on the issue, transfer, or cancellation of stock of corporations, or changes in officers, prompt reports will be made thereof as required by the regulations.

The books and accounts of the applicant covering the

business to be carried on under this lease, if approved, will be kept at Buffalo, N. Y., in the custody of the applicants.

The applicant agrees that the money deposited with the United States Indian Superintendent as the first years' advance royalty under said lease shall be and become the property of the lessor if the lease be disapproved because of the lessee's failure to meet the requirements of the law or the regulations of the Department of the Interior applicable thereto or because of any other fault or defect chargeable to the lessee.

References: (2)

First National Bank, P. O., Nowata, Okla.
National Supply Co., P. O., Pittsburg, Pa.
Nowata National Bank, P. O., Nowata, Okla.

Executed this 23rd day of March, 1912, at Buffalo, N. Y.

Southwestern Petroleum Company (Seal)
George A. Foreman, President.

David Gunsburg.

Before me a notary public in and for the county of Erie, State of New York, personally appeared George A. Forman and David Gunsburg who, being first duly sworn, according to law, depose and say that the foregoing application was signed by proper authority in good faith for the purpose therein stated, and that the statements made therein are true as they very believe.

(L. S.) (Seal) Fred J. Zuidema,

My commission expires Mar. 30, 1913. Notary Public.

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1. Corporations shall furnish with their first application the additional financial showing required by the regulations.

2. Bank references are preferred.

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Form D—Series 1908.

AFFIDAVITS OF INDIAN LESSOR AND LESSEE, PROOF OF BONUS AND NO DEVELOPMENT.

(Must in all cases be properly executed and accompany Lease when filed.)

*State of Oklahoma, County of Muskogee*—ss.

I, Eastman Richards, of Pierce, McIntosh County, Oklahoma, being first duly sworn according to law, state upon oath that I am more than thirty years of age, and that under date

of March 20, 1912, I made an Oil and Gas Mining Lease with David Gunsburg and Southwestern Petroleum Company, covering 80 acres; that said lease was read over and fully explained to me at the time that I signed same, and I understand the nature, contents, and effect thereof; that I made said lease in good faith for the purposes therein specified, and now join in the application of the lessee for its approval by the Secretary of the Interior.

I further swear that, other than the terms of the lease described, the only contract, agreement, or undestanding between myself and the lessee covering additional payments made or to be made as bonus money, or any other consideration, is as follows:

Eighty dollars ($80.00) as bonus, of which amount I acknowledge the receipt of....., the balance, if any, payable....., and the following additional agreement: Bonus held by Cashier of Union Agency to be paid when lease approved.

I further state that I have satisfied myself as to the value of this lease, and believe that the amount of bonus offered me as above indicated was reasonable and proper at the date the lease was executed. EASTMAN RICHARD.

Witnesses to Mark:

.....

P. O., .....

.....

P. O., .....

(Where Lessor does not speak English, interpreter must sign and be sworn to correctness of interpretation.)

Lessor speaks English.

.....

(Signature of Interpreter.)

Subscribed in my presence and sworn to before me this 20th day of March, 1912. In connection therewith I certify that the above affidavit was fully explained to the Indian lessor, and I am satisfied said lessor fully understands the nature of the lease referred to. Wm. Kremer, a

(Seal) Notary Public,

Union Agency, Muskogee, Ok.

Commission expires May 4, 1914.

*a* Affidavit of Indian lessor should be sworn to before a United States Commissioner, Indian Superintendent, District Agent, County or District Judge, Federal Judge or Clerk of Federal Court. Where leases are executed by guardians under

order of Court, affidavit of lessor may be executed before a notary public. JL

AFFIDAVIT OF LESSEE.

I, Roy Scales, of Tulsa, Okla., being first duly sworn according to law, state upon oath that I am the lessee or the duly authorized agent of the lessee in the above-described lease; that I know of my own personal knowledge that the only bonus to be paid for the execution of said lease, directly or indirectly, by the lessee to the lessor or any one for him is $20.00, of which $20.00 has been paid, and $....none.... payable....none...., and that the other agreement is precisely as stated by the lessor above; that there have been no operations or drilling for oil or gas by the lessee or any one for him upon the said premises included in said described lease, *and that said lease will be completed under the rules of the Secretary of the Interior without unnecessary delay.*

ROY SCALES.

Subscribed and sworn to before me this 4th day of April, 1912. (Seal) Cora Buchanan,

My Commission Expires June 1st, 1914. Notary Public.

Endorsed: Received Union Agency Apr. 8, 1912. Enclosure To No. 20361. Office of Indian Affairs, Received Jul. 22, 1912. File 73380.

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May 12, 1905.

Received Union Agency Apr 5. 1912. Enclosure to No. 20127.

Equitable Surety Company of St. Louis, surety on the foregoing bond, hereby certify that it has heretofore filed in the proper office of the Department of the Interior at Washington, D. C., the following papers:

1. Evidence that it has obtained authority from the Attorney General of the United States under the Act of August 13, 1894, to act as sole surety on bonds in matters affecting the United States.

2. Evidence of the election of general officers of the Company for the current year, with their names.

3. Evidence of the appointment of an agent for services of process in the Eastern Judicial District of Oklahoma.

4. Evidence of the authority of the within named C. A. Lockard, Jr., to execute bonds of the character of that annexed hereto on behalf of the Company.

5. A copy of its quarterly financial statement as filed in the Department of Justice.

*In witness whereof*, the said Equitable Surety Company of St. Louis has caused its seal to be hereto affixed and these presents to be executed by its proper officers this 20th day of March, 1912.

(Seal) Equitable Surety Company,
By C. A. Lockard, Jr.,
Att'y-in-fact.

Office of Indian Affairs. Received Jul. 22, 1912. File 73380.

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Form C, Series of 1908.—To Accompany Leases Executed by Allottees of the Five Civilized Tribes.

BOND.

*Know All Men By These Presents*, That Southwestern Petroleum Co. and David Gunsburg of Buffalo, N. Y., as principals, and Equitable Surety Company of St. Louis, Missouri, as surety, are held and firmly bound unto the United States of America in the sum of Fifteen Hundred ($1500.00) dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, successors, executors, or administrators, jointly and severally, firmly by these presents.

*Sealed* with our seals and dated this 20th day of March, 1912.

The condition of this obligation is such that whereas the above-bounden Southwestern Petroleum Company and David Gunsburg, as principals, entered into a certain indenture of lease, dated March 20th, 1912, with Eastman Richard, for the lease of a tract of land described as follows:

W 2 of NE 4 of Section 5, Township 17 North, Range 7 East,

and located in the Cherokee Nation, Oklahoma, for oil and gas mining purposes for the period of Ten years from the date thereof and as much longer thereafter as oil or gas is found in paying quantities on said land.

Now, if the above-bounden Southwestern Petroleum Company and David Gunsburg shall faithfully carry out and observe all the obligations assumed in said indenture of lease by them and shall observe all the laws of the United States, and regulations made, or which shall be made thereunder, for the government of trade and intercourse with Indian tribes, and all the rules and regulations that have been, or may be, lawfully prescribed by the Secretary of the Interior relative to leases executed by allottees of the Five Civilized Tribes,

in Oklahoma, then this obligation shall be null and void; otherwise to remain in full force and effect.

Signed and sealed in the presence of—

*Witnesses: (a)*

Ralph Hochstetter, P. O., Buffalo, N. Y.; P. B. A. Simon, P. O., Buffalo, N. Y., as to David Gunsburg. (Seal)

Ralph Hochstetter, P. O., Buffalo, N. Y.; P. B. A. Simon, P. O., Buffalo, N. Y., as to Southwestern Petroleum Co., by Geo. A. Forman, Prest.; Attest: Benj. Kittinger, Secretary. (Seal)

E. J. Phelps, Muskogee, Ok.; John J. Moffatt, Muskogee, Ok., as to Equitable Surety Company, C. A. Lockard, Attorney in fact. (Seal)

*a* Two witnesses to all signatures.

Endorsed: Department of the Interior. Bond of Southwestern Petroleum Co., and David Gunsburg, Buffalo, New York. Lessee of W/2 of NE/4 of 5-17-7. In the Cherokee Nation, Oklahoma, for oil and gas mining purposes, dated March 20, 1912. Washington, D. C., Sep. 24, 1912. Approved: Samuel Adams, Assistant Secretary of the Interior. H FHA Original. 6-953

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Form E.—Series of 1908.

EVIDENCE SHOWING AUTHORITY OF OFFICERS TO EXECUTE LEASES, BONDS AND ACCOMPANYING PAPERS.

Whereas, George A. Forman is duly elected, qualified, and acting president of Southwestern Petroleum Company, a corporation duly organized and existing under the laws of West Virginia; and

Whereas, Benj. Kittinger is duly elected, qualified, and acting secretary of said corporation; and

Whereas, both of said persons were president and secretary, respectively, on the 26th day of March, 1912, at which time the President executed an oil and gas mining lease with Eastman Richards allottee of certain lands in the Creek Nation, Oklahoma:

Now, Therefore, I, the undersigned Secretary of said corporation, do solemnly swear that the mining lease mentioned above was duly and regularly entered into by the officers of said corporation as named, by and under authority of the board of directors of said corporation, and in accordance with the by-laws thereof, and further, that said officer was duly authorized and empowered on behalf of the corpor-

ation named to execute any and all bonds, applications, or other papers required in connection with said mining lease.

I further certify that the action of said officers in executing the papers mentioned on behalf of said corporation binds said corporation to a full and complete performance of any and all obligations contained therein.

Dated at Buffalo, N. Y., this 26th day of March, 1912.
(Corporate Seal) Benj. Kittinger.

Subscribed and sworn to before me this 26th day of March, 1912. (Seal) Fred J. Zuidema, (Seal)
My commission expires Mar. 30, 1913. Notary Public.

Note: To be executed by Secretary or President, (Secretary in all cases where possible), and in every case to have corporate seal affixed. JL

Endorsed: Received Union Agency Apr. 5, 1912. Enclosure To No. 20127.

Office of Indian Affiairs. Received Jul. 22, 1912. File 73380.

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PLAINTIFF'S EXHIBIT C.

DEPARTMENT OF THE INTERIOR.

UNITED STATES INDIAN SERVICE.

UNION AGENCY. C

In the matter of conflicting leases covering lands allotted to Eastman Richards.

Office of Indian Affs
Received Jul 22 1912
File 73380

Leases Nos. 22293-22518
22568-22601.

*Statement of Record.*

The following oil and gas mining leases have been filed with this office for consideration:

No. 22293, Eastman Richard to the Eastern Oil Company, dated Nov. 29, 1911, filed January 13, 1912, covering the NE/4 of Sec. 5, T. 17 N., R. 7 E., 160 acres of allotment of the lessor;

No. 22518, Eastman Richard to A. L. Funk and O. E. Riter, dated March 20, 1912, filed March 22, 1912, covering the E/2 of NE/4 of Sec. 5, T. 17 N., R. 7 E., 81.18 acres of allotment of lessor;

No. 22568, Eastman Richard to William J. Anicker, dated March 28, 1912, filed March 30, 1912, covering

the W/2 of NE/4 of Sec. 5, T. 17 N., R. 7 E., 80 acres of allotment of lessor;

No. 22601, Eastman Richard to David Gunsburg and Southwestern Petroleum Co., dated March 20, 1912, filed April 5, 1912, covering the W/2 of NE/4 of Sec. 5, T. 17 N., R. 7 East, 80 acres of allotment of lessor.

Upon examination of lease No. 22293, Eastman Richard to the Eastern Oil Company, which was filed on January 13, 1912, it was found that the lessee had failed to comply with the regulations in two respects; *first*, that the lease was not filed within thirty days from the date of its execution, and *second*, the "Application" did not contain all the information required.

On January 24, 1912, the Eastern Oil Company was notified by registered mail of these deficiencies, to which notice it replied by letter of January 29, 1912, received at Union Agency on February 1, 1912, giving its reason for the delay in filing the lease, and returning the application and financial statement, with advice that the consent of the lessor to the consideration of the lease notwithstanding the delay in filing would be furnished as soon as possible.

On March 21, 1912, this office received formal notification by Eastman Richard, lessor, protesting against the approval of the Eastern Oil Company's lease, stating that he had been approached by the lessee company for the purpose of securing his consent to the consideration of the lease, which he had refused, and still refused. This notification bears even date, namely, March 20, 1912, with two leases above described, one executed in favor of A. L. Funk and O. E. Riter, filed March 22, 1912, and one executed in favor of David Gunsburg and the Southwestern Petroleum Company, filed April 5, 1912.

On March 26, 1912, and on April 9, 1912, communications from the Eastern Oil Company were received offering an additional bonus for the Eastman Richard lease, its remittance in the sum of $800.00 having been tendered with letter of April 9, 1912.

In the meantime, and on March 28, 1912, the lessor entered into a further lease covering the West Half (W/2) of Northeast Quarter (NE/4) of Section 5, Township 17, Range 7, in favor of W. J. Anicker, the same land being also described in the lease to David Gunsburg and the Southwestern Petroleum Co. as well as in the original lease to the Eastern Oil Company. The lease running to Mr. Anicker was received at this office on March 30, 1912.

On April 11, 1912, the office received a further statement signed by the lessor, said statement bearing date of April 10, 1912, requesting approval of the Eastern Oil Company's lease, notwithstanding the delay in filing same, upon condition that the Eastern Oil Company pay a greater bonus than that offered by other lessees, and agreeing that any money tendered in connection with leases to parties other than the Eastern Oil Company, should be refunded.

On April 19, 1912, the office received a petition drawn by the attorneys for Eastman Richard, bearing the signature of the lessor, containing an explanation of the execution of the various leases described above, asking that a hearing be had at an early date, and that one of the leases covering his allotment be approved upon the payment of a reasonable bonus, and agreeing to refund any moneys tendered by other parties for a lease on the same land.

A hearing was accordingly held at this office on May 13, 1912, pursuant to notices to the interested parties, at which time the attorneys for Mr. Anicker asked for a continuance, filing his affidavit in connection therewith.

The case was continued until the Saturday following, but on May 14, 1912, by the consent of the interested parties, the affidavit filed by Mr. Anicker was made a part of the record, and it was agreed that for the purposes of this case, the parties, if present, would testify as set forth in said affidavit. A further hearing was then had on May 14, 1912, all parties being present or represented by attorneys.

The testimony taken at the hearings above mentioned was transcribed and is now a part of the record in the case.

## FINDINGS.

In considering the rights of the various parties to leases of this land the first question to be determined is whether or not the prior lessee, the Eastern Oil Company, is entitled to favorable action upon its lease, and if so, the further consideration of the contest between David Gunsburg and Southwestern Petroleum Company and W. J. Anicker, would be unnecessary.

It is apparent from the record that the lessor is vacillating and inconsistent, has manifested a disposition to execute such papers as may have been prepared for his signature, asking first the disapproval of the Eastern Oil Company's lease and upon the same date executing two leases covering the same land, in favor of other parties; then entering into

still another lease covering eighty acres, in favor of W. J. Anicker, and still later signing a statement again requesting approval of the lease in favor of the Eastern Oil Company, the prior lessee, and this statement is followed by a petition prepared by his attorneys, requesting a hearing on the matter and the approval of a lease by the Department, based upon a reasonable cash bonus, but without specifying which lease he desired approved, and agreeing to do equity by returning the moneys paid in connection with such leases as may finally be determined by the Department not entitled to favorable action.

Section 2 of the Regulations of April 20, 1908, provided, as follows:

> "All leases shall be in quadruplicate and with the papers required shall be filed within thirty days from and after date of execution by the lessor, with the United States Indian Agent, at Union Agency, Muskogee, Oklahoma."

Lease No. 22293, executed on November 29, 1911, was not filed with this office until the afternoon of the Thirteenth day of January, 1912, fourteen days after the thirty days from date of execution had expired, and the only reason submitted by the lessee for its delay is found in its letter bearing date of January 29, 1912, which reads in part, as follows:

> "As reasons for delay in filing the Richard lease, wish to state we had no map showing location of this tract, and were unable to secure one as promptly as we expected, and we desired to know the location before filing the lease."

This letter was in response to the usual notice from this office to the lessee company, to the effect that as the lease was not filed within the prescribed time, thirty days, it would be necessary that an explanation or its reason for the delay, be furnished, also the consent of the lessor to the approval of the lease irrespective of the delay in filing. Office notice to which reference is made was addressed to the lessee on January 24, 1912, and this letter of January 29, acknowledging receipt thereof, shows conclusively that this letter was received, that the company was fully informed as to the papers necessary to complete the lease, and yet it is not shown that any effort was made for several weeks thereafter to secure the lessor's consent to the approval of the lease notwithstanding the delay in filing, and the statement submitted by the lessor, as his consent was not received until April 11, 1912, during which time three other leases, embracing collectively all the

land included in the Eastern Oil Company's lease, had been executed and filed with this office, and furthermore, during the intervening time the land had become more valuable as an oil and gas mining proposition.

On behalf of the Eastern Oil Company it is contended that its lease should be approved on the record for the reason that all subsequent lessees were cognizant of its lease and that as soon as the lessor could be found his consent was obtained to the approval irrespective of the delay in filing.

It is further contended that the first lease should be favorably considered for the reason that the lessee agreed to pay an additional bonus in accordance with the value thereof at the time the final waiver and consent of the lessor were obtained.

It is apparent from the testimony adduced at the hearings, and from the various papers filed in connection with the case, that Eastman Richard, who is a full-blood Creek Indian, is without business experience or ability, and has, at best, but an imperfect conception of lease matters, and it seems that the various lessees encountered little difficulty in securing his signature to such papers as it suited their purposes to submit.

In arriving at a conclusion as to the disposition which should be made of the Eastern Oil Company's lease it should be borne in mind that while the thirty-day period allowed within which to file leases is a regulation, this regulation, as will be hereafter shown, was fully authorized by law. It follows, therefore, that if the lessee failed, for any reason, to file its lease within thirty days, the lessor should have, and has uniformly been accorded the privilege of ratifying or disaffirming such proposed lease.

In nearly every instance thirty days is more than an ample time within which to submit a lease, and the only reason submitted by the Eastern Oil Company, insufficient data as to the location of the land involved, gives rise to a doubt in my mind as to whether this company actually intended to enter into this lease unless a further examination of the oil development in the field warranted the conclusion in the minds of its officers that this particular lease was of sufficient value as an oil and gas mining proposition to warrant paying royalties and rental thereon.

The Eastern Oil Company is one of the oldest operators in the field, having entered into one hundred and twenty-four Departmental leases, a part of which leases were taken in

the year 1904. Its officers are therefore fully conversant with the regulations, and, in fact, have at no time manifested a desire to plead ignorance of the existence of the thirty-day period within which to file the lease. In my opinion, the policy of the Department should be consistently followed, whether or not the lessee actually has information as to the regulations, otherwise it would be useless to attempt to enforce the same.

The contention as to the knowledge on the part of the subsequent lessees, of the Eastern Oil Company's lease, is unsound, for the reasons above stated, and for the further reason that the rights of other parties intervened before the consent of the lessor to the continuation of the prior lease was secured. It would, therefore, appear that, under the circumstances, favorable recommendation could not consistently be made on the Eastern Oil Company's lease.

If the contention of the Eastern Oil Company were sustained it would open the door to speculators who could, for one reason or another, hold leases in their possession, delay completion of same, and at the same time keep the land incumbered, thus depriving the lessor of his right to make a better lease if subsequent development in the vicinity of his land makes it of greater value for oil and gas mining purposes.

The next question for consideration in connection with these leases is the determination of whether the lease of Anicker should be approved, covering the W/2 of NE/4 of Section 5-17-7, or whether the prior lease to David Gunsburg and Southwestern Petroleum Company, covering the same land, should receive favorable consideration. These leases do not conflict with lease No. 22518, in favor of A. L. Funk and O. E. Riter.

The lease in favor of David Gunsburg and Southwestern Petroleum Company is dated March 20, 1912, and filed April 5, 1912, while the lease to W. J. Anicker bears date of March 28, 1912, and was filed March 30, 1912. The Department has uniformly held in such cases that where a lease is filed, with the papers necessary for completion of same, within thirty days, that the date of execution is the date from which the priority of the lease is determined.

To my mind this is the only reasonable construction of the regulations, so long as thirty days or any other period is allowed within which to file a lease. But it is contended on behalf of Mr. Anicker that the lease to Gunsburg and the Southwestern Petroleum Company was obtained by fraud. To this contention I cannot agree for the reason that this

lease and the lease to Messrs. Funk & Riter were presented to this office on the date of execution, fully explained by Mr. William Kremer, Asst. Chief Clerk, a notary in this office, and acknowledged by the lessor. This contention the attorneys for Mr. Anicker were unable to support in their cross examination of Eastman Richard, although it was apparent at that time that the lessor did not remember the names of the lessees. He was, however, confident that he had leased his entire allotment at that time, and it appears from Mr. Kremer's testimony, May 14, 1912, page 23, that the lease was fully explained to the lessor, as is done in all cases where leases are acknowledged before a notary in the employ of this office, and considering the numerous declarations and affidavits submitted bearing the lessor's signature in connection with this case, showing a change of attitude upon every occasion approached in connection with these leases, and his lack of business ability, I am not inclined to entertain any doubt as to the fact that the lease was fully explained to him upon the date of execution thereof, notwithstanding his uncertainty at the hearing on May 13th, and 14th as to the name of the lessee.

It is further contended, in behalf of Mr. Anicker, that he should be considered prior lessee for the reason that his lease was made prior to the time the lease of Gunsburg and the Southwestern Petroleum Company was filed at the Union Agency or elsewhere, and that the same was not only filed in the county wherein the land is situate, but also filed at Union Agency at a date prior to the date upon which the lease to Gunsburg and the Southwestern Petroleum Company was received.

It is also contended that he had no actual notice, and an attempt has been made to show that the lessor had conveyed the idea to Mr. Anicker or his agent that the only lease he had executed when approached by Mr. Anicker, was the lease in favor of the Eastern Oil Company. It will be noted in the testimony that an unsuccessful effort was made to secure an admission from Eastman Richard that would corroborate this contention.

For the purposes of this case I do not consider it necessary to determine at this time whether or not the evidence at hand shows that such representations were made by the lessor; even admitting that the lessee was misled by the lessor, the regulations which provide thirty days within which a lease may be filed, if binding upon parties interested in securing leases, should be considered as heretofore, as giving that lease priority which bears the prior date of execution

and is filed with the papers required, within the 30-day period.

An examination of the lease to David Gunsburg and the Southwestern Petroleum Company discloses the fact that this lease was filed within thirty days, in accordance with the regulations, and that the same was executed prior to the lease in favor of Mr. Anicker Concerning the contention of Mr. Anicker that the date of filing should be regarded as the date of priority, which carries with it the contention that the regulations of the Secretary of the Interior allowing thirty days within which to file a lease is not within the power conferred on the Secretary of the Interior, under the law, which provides in part (Section 2, Act of Congress of May 27, 1908 [35 Stat. L. 312]):

> "That leases of restricted lands for oil and gas mining purposes * * * may be made with the approval of the Secretary of the Interior under rules and regulations provided by the Secretary of the Interior and not otherwise."

It is interesting in this connection to note a decision of the Supreme Court of the State of Oklahoma in the case of *Simmons et al.* v. *Whittington*, (112 Pac. Reporter, 1018), construing the validity of the regulation of the Secretary of the Interior with reference to removal of restrictions to become effective thirty days after date of approval of the application for such removal by the Secretary, in which the court holds:

> "The rule complained of falls within this grant of power, and the Secretary of the Interior in this case had power to prescribe by general rule that no order of removal should be effective until thirty days from the date of its approval by him."

The law (Act of April 21, 1904, 33 Stat. 204), under which the restrictions on the allotment involved in this case were removed, contained no provision relative to the thirty-day period, but the act is similar in its provisions relative to removal of restrictions to the Act of May 27, 1908, as applied to leases.

In commenting upon this question and the general powers of the Secretary of the Interior, the court further held:

> "It is not mandatory upon the Secretary of the Interior to remove the restrictions of any allottee; it is within his discretion. The application may be made to the Agent of Union Agency as prescribed by the statute, and said agent may be satisfied that it will be to the best interests of the allottee to remove his restrictions; yet such fact does not require a removal thereof."

In my opinion the above rule is supported by the weight of authority, and that in the disposition of these leases, or any lease submitted to the Honorable Secretary of the Interior for approval he may approve or disapprove. A contrary construction of the law would deprive the Secretary of the Interior of his discretion in the matter, which is clearly granted to him by various Acts of Congress affecting leases on lands allotted to citizens of the Five Civilized Tribes. As a basis for the exercise of his discretion, the Department has adopted certain regulations, the enforcement of which are intended to give all persons fair and equal rights thereunder, and of which regulations prospective lessees must not only take notice, but must assume that the regulations will be enforced against them and that the Department will protect them where they take advantage of any privileges granted thereby, such as the use of the thirty-day filing period.

The Secretary clearly having the right to fix a reasonable period within which time lessees may and must file their leases for approval, it follows that if such a regulation is made all lessees must receive the same treatment, both as to the benefits or privileges of taking the time allowed, or on the contrary the penalty, if they fail to comply with the regulation. If this policy was not followed, the rule might as well be abolished, but this would lead to many opportunities of double dealing on behalf of both lessees and lessors. It being almost a physical impossibility to execute, complete the papers and file leases simultaneously, a reasonable time must be given. The thirty-day rule has been in effect since the early days of oil lease development in the Five Tribes and persons taking leases almost universally understand that the date of the lease, if filed within the thirty-day period, governs, instead of the date of filing.

Thus we see that a practical and fair application of the rule to all parties must require the disapproval of the lease of the Eastern Oil Company, because of its failure to comply with such rule. Their lease could have no standing when filed fourteen days late, except with the consent or ratification of the lessor, which would have the same effect as the execution of a new instrument, but this consent or ratification was not secured until after other leases were given and intervening rights attached. The lease of Mr. Anicker must also be disapproved not because he was in any way delinquent himself, but because of the prior lease of David Gunsburg and Southwestern Petroleum Company filed with all papers required within even a shorter period than that allowed by the Department.

I am, therefore, of the opinion that lease No. 22293, to the Eastern Oil Company, should be disapproved, that the lease in favor of W. J. Anicker, No. 22568, should be disapproved, and that all bonus moneys tendered by these lessees in connection with their leases should be refunded, and that lease No. 22518 and 22601 to Funk and Riter and Gunsburg and Southwestern Petroleum Company, respectively, should be approved.

DANA H. KELSEY,
*United States Indian Superintendent.*

Muskogee, Oklahoma. Union Agency, July 1, 1912.

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## PLAINTIFF'S EXHIBIT D.

DEPARTMENT OF THE INTERIOR, WASHINGTON.

Filed by H. M. V. Oil and Gas Leases. Nos. 22293, 22518, 22568, 22601. For File.

Office of Indian Affairs. Received Sept. 25, 1912. 94843.

The Commissioner of Indian Affairs. Sep. 24, 1912.

Sir: By letter of August 6 you submit a decision of the Superintendent of Union Agency respecting several conflicting leases.

Eastman Richards, a full-blood Creek, on November 29, 1911, executed a lease covering his allotment of 160 acres, to the Eastern Oil Company, receiving a bonus of $80 cash. The company failed to file their lease at the Union Agency within thirty days, as required by regulation, but filed it about two weeks late, on January 13, 1912, without having obtained the consent of the lessor.

More than two months later, on March 20, 1912, the said Richards executed a lease to Funk & Riter, covering one-half the same land, and a lease to Gunsberg and others, covering the other half thereof, and the same day signed a protest against consideration of the prior lease to the Eastern Oil Company. Afterwards, on March 28, he executed to W. J. Anicker, a lease covering part of the same land.

The requirement that the lease should be filed at the agency and the proper payments there made within thirty days is an essential element of a contract of lease made between the Indian and the lessee. If this term is not complied with, all rights given to the lessee terminate. It is perfectly proper that a lease filed after the thirty days should be approved, if the lessor consents, because that, in effect, is the making of a new contract; but where the lessor does not consent, or where rights of third parties have intervened before the lessor gives his consent, it seems clear that the lessee has no equity on which to found a demand for the waiving of

the condition which he has failed to perform. For this reason the lease to the Eastern Oil Company (No. 22239) must be and has been disapproved.

The lease to W. J. Anicker conflicts with that to Gunsburg and others, both covering the same land. Both leases were filed at the agency within thirty days of their execution. The Anicker lease, executed March 28, was filed March 30; the Gunsburg lease, executed March 20, was filed April 5. The rule of practice is that among competing leases, duly filed in compliance with the rule, the lease first executed shall be accepted; *i. e.*, the date of execution governs. Anicker contends that the date of filing ought to govern. In your letter you say:

> It is contended that the leases should have been filed for record in the proper county in conformity with the laws of the State of Oklahoma, and in view of the fact that the lease in favor of Anicker was so recorded, it should be approved.

There seems to be a misapprehension here. There is nothing to show that Anicker's lease was recorded in the office of the County Recorder, either in the way of notation on the lease or testimony in the case. Evidently it was not so recorded, but the contention is that as the Gunsburg lease also was not so recorded, the latter ought not to prevail over a lease (Anicker's) which was filed first at the agency. The lengthy discussion of this point in the briefs does not convince me that the recognized rule of the Department should be changed, or should be waived in this case. It has been long established and is well understood. It is suited to the conditions in which the oil and gas leasing business is carried on. In very many cases, a considerable time is required, after the signature of a lessor is obtained, for the execution by the lessee, the making of the bond and other papers. The Secretary, in the exercise of the power vested in him by law, has given thirty days for this purpose. The only inconvenience which may follow the enforcement of the rule, is where some enterprising person, in keen competition to secure a promising piece of land, induces the allottee to execute a lease to him, after he has already leased it to another; and having filed his lease at the agency, is subsequently informed that the lease executed prior to his has been duly filed and takes precedence. For these reasons the lease to W. J. Anicker (No. 22568) has been disapproved.

The lease to Funk and Riter (No. 22518) and that to Gunsburg and the Southwestern Petroleum Co. (No. 22601)

are found to have been properly executed and filed within the time prescribed by the rules, and have been this day approved. The disposition of advanced royalties and bonuses recommended by you and the Superintendent is also approved. Respectfully, SAMUEL ADAMS,
WCP H *First Assistant Secretary.*

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## PLAINTIFF'S EXHIBIT E.

DEPARTMENT OF THE INTERIOR.

Washington, December 9, 1912.

Oil and gas leases Nos. 22568 and 22601.

Office of Indian Affairs. Received Dec. 10, 1912. 125603.

The Commissioner of Indian Affairs.

Sir: By letter of September 24, 1912, you were informed of the disposal of several leases of Eastman Richards, a full-blood Creek, upon his allotment of 160 acres. Two of said leases covered the same land, one having been given to Gunsburg and the Southwestern Petroleum Company, the other to W. J. Anicker. The former was approved on the ground of priority of execution, though the latter was filed first at Union Agency. Both were filed at the Agency within thirty days from their execution, as required by rule.

A motion for reconsideration of this action has been filed in behalf of Anicker. The regulations do not provide for such a motion in reference to the approval of leases. The Superintendent of Union Agency had, therefore (before the filing of said motion) delivered the approved lease to Gunsburg and the Southwestern Petroleum Company, considering the action of the Department final.

The motion is based on allegations that, in determining against the Anicker lease, a mistake was made as to "the force of the recording act, enacted by Congress, relative to the leasing of Indian lands" (34 Stat. 137-145); and in finding that the Anicker lease had not been recorded in the office of Register of Deeds, Creek County.

On the latter point the Department letter said:

> "There is nothing to show that Anicker's lease was recorded in the office of the County Recorder, either in the way of notation on the lease or testimony in the case. Evidently it was not so recorded."

This statement was made after a search through the record submitted, and after a careful inspection by several persons of the four copies of the Anicker lease, in view of the

claim in argument that it had been so recorded. There is now submitted a copy of the Anicker lease on which is found a typed indorsement of filing with the Register of Deeds on April 1, 1912. The Acting Agent makes affidavit October 12th that he had examined "one of the original parts" of said lease and compared same with this copy, and that the copy is "a true and accurate copy of said lease and the file mark thereon."

The copy of the lease retained in the Indian Office has no such file mark upon it. Counsel for Anicker has stated, however, that in addition to the four parts of the lease required by the regulations, a fifth part was prepared and executed, and that this part was filed with the Register of Deeds in the proper county. This apparently explains why the record presented to the Department did not disclose the filing of this lease in the Register's office. It is not believed, however, this is a material point.

If there were any advantage in the prior filing of a lease which was entered into and executed after another lease, both having been filed at the agency within the time required by regulation, Anicker would have that advantage. The Act of March 1, 1907 (34 Stat. 1026), makes the filing at Union Agency legal notice. Anicker's lease is stamped as filed at the Agency March 30, 1912. Until approved by the Secretary, it was not a completed instrument and the fact of its having been recorded in a county office can not estop the Secretary from finding that another lease regularly executed and filed is more for the allottee's interest and better entitled to approval.

The motion to reconsider will not be entertained.

Respectfully,

Copy (Signed) SAMUEL ADAMS,
W. C. P. H. *First Assistant Secretary.*

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EXHIBIT F.

Filed by H. M. V. 43200

Land Contracts. 73380-1912. 73686-1912. 74928-1912. 75138-1912. C C B Leases.

Office of Indian Affairs. Received Sep. 25, 1912. 94843.

The Honorable, The Secretary of the Interior. Aug 6 1912.

Sir: I have the honor to enclose four oil and gas mining leases covering lands in the Creek Nation executed as follows:

No. 22293, Eastman Richard to the Eastern Oil Company;

No. 22518, Eastman Richard to A. L. Funk and O. E. Riter;
No. 22601, Eastman Richard to David Gunsburg and Southwestern Petroleum Co.;
No. 22568, Eastman Richard to Wm. J. Anicker.

It will be noted that leases numbers 22568, William J. Anicker, lessee, and 22601, David Gunsburg and the Southwestern Petroleum Company lessee, cover the same land, and that this land, together with that covered by lease No. 22518, in favor of A. L. Funk and O. E. Riter, are embraced in lease No. 22293, in favor of the Eastern Oil Company.

Attention is invited to paragraph 2 of the regulations of April 20, 1908, governing the leasing of lands of the Five Civilized Tribes, revised to May 1, 1912, which provides as follows:

> All leases shall be in quadruplicate, and, with the papers required, shall be filed within thirty days from and after the date of execution by the lessor with the United States Indian Agent at Union Agency, Muskogee, Oklahoma.

Attention is also invited to the Act of Congress approved March 1, 1907 (34 Stat. L. 1026), which provides:

> The filing heretofore or hereafter of any lease in the Office of the United States Indian Agency, Union Agency, Muskogee, Indian Territory, shall be deemed constructive notice.

The Office is advised by the Superintendent at Union Agency that the lease of the Eastern Oil Company was not filed within thirty days of its execution, and on January 24, 1912, the company was advised of this and other deficiencies. On March 20, 1912, Eastman Richard executed lease No. 22518 to A. L. Funk and O. E. Riter, and No. 22601, in favor of David Gunsburg and The Southwestern Petroleum Company, which were filed with the Superintendent on March 22 and April 5, 1912, respectively. On March 28, 1912, Eastman Richard executed lease No. 22568 in favor of Wm. J. Anicker, which was filed on March 30, 1912, and which covered the land embraced in lease to Mr. Gunsburg and The Southwestern Petroleum Company.

In order to adjust the matter of the conflicting leases a hearing was held by the Superintendent of Union Agency and on July 1, 1912, that office rendered its opinion in which it held that lease in favor of the Eastern Oil Company should be disapproved because of its failure to file its lease within the thirty days allowed by the regulations; that lease No.

22568 to William J. Anicker should be disapproved because of the prior lease. No. 22601, in favor of David Gunsburg and The Southwestern Petroleum Company; and that lease No. 22518, in favor of A. L. Funk and O. E. Riter, and No. 22601, in favor of David Gunsburg and The Southwestern Petroleum Company, be approved.

A motion for review and notice of appeal from the decision of the Superintendent at Union Agency was filed, and after motions for rehearing were argued by counsel it was agreed that the case should be forwarded to the Department, that ten days' time should be allowed for preparing and serving briefs of appellants, and ten days additional for preparing and serving briefs for appellees, all briefs, with proof of service, to be filed directly with the Indian Office.

There are also enclosed herewith brief and argument by the attorney of William Anicker and also brief and argument in favor of David Gunsburg and The Southwestern Petroleum Company. An appearance has been entered by the attorney of A. L. Funk and O. E. Riter but no brief and argument in favor of the Eastern Oil Company has been forwarded to this office. It is contended by the attorney for William J. Anicker that the leases should have been filed for record in the proper county in conformity with the laws of the State of Oklahoma and in view of the fact that the lease in favor of William J. Anicker was so recorded, it should be approved.

It has been the understanding of this office that the date of the lease, if filed with the Superintendent at Union Agency within the thirty-day period, governs instead of the date of filing and it is not the understanding of the office that leases must be filed in the county in which the land is located in order to give notice to a third party before the approval by the Secretary of the Interior.

The office concurs in the recommendation of the Superintendent of Union Agency and it is respectfully recommended that lease No. 22293 in favor of the Eastern Oil Company and No. 22568 in favor of William J. Anicker be disapproved; that the bond accompanying lease No. 22568 be returned and that R. Kessel, cashier and special disbursing agent at Union Agency be granted authority to refund to the lessees the advanced royalty and bonus tendered in connection with their respective leases, except that the advance royalty under lease No. 22293 to the Eastern Oil Company should be paid to the lessor for the reason that the said lease was not filed within thirty days in accordance with the regulations. It is further respectfully recommended that lease No. 22518 in favor of A. L. Funk and O. E. Riter and No. 22601, in favor

of David Gunsburg and the Southwestern Petroleum Company, and accompanying bonds, which appear to be properly executed, be approved,
executed, be approved. Respectfully, (Signed) F. H. Abbott,
8-HKS-3 Assistant Commissioner.

Recommendation approved:
....., Assistant Secretary.

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EXHIBIT "G."

1—43073 P&R

Address only Commissioner of Indian Affairs.

Refer in reply to the following:

H Office of Indian Affairs. Received Sep. 25, 1912. 94843.

Dept. of the Interior Received Aug. 19, 1912.

To Asst. Atty. Genl. Sec'ys. Off Mails & Files.

DEPARTMENT OF THE INTERIOR.

*Office of Indian Affairs. Washington.*

Land Contracts. 73380-1912. 73686-1912. 74928-1912. 75138-1912
81435-1912 C C B Leases. Aug. 19, 1912.

The Honorable The Secretary of the Interior.

Sir: I have the honor to refer to letter dated August 6, 1912, submitting for your consideration four conflicting oil and gas mining leases covering lands in the Creek Nation executed as follows:

No. 22293, Eastman Richard to the Eastern Oil Company;

No. 22518, Eastman Richard to A. L. Funk and O. E. Riter;

No. 22601, Eastman Richard to David Gunsburg and Southwestern Petroleum Co.;

No. 22568, Eastman Richard to Wm. J. Anicker.

In connection with the leases referred to above there was submitted brief and argument by the attorney of Wm. J. Anicker and also brief and argument in favor of David Gunsburg and the Southwestern Petroleum Company.

There is enclosed herewith letter dated August 1, 1912, from J. F. Brett, attorney for David Gunsburg and the Southwestern Petroleum Company, together with a supplemental brief and argument for his clients the matter of the conflicting leases referred to above. Respectfully, C. F. Hauke,
L-73380 Second Assistant Commissioner.
8-HKS-15 Filed by H. M. V.

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"EXHIBIT H" (Exhibit F in Original Bill).

Muskogee, Okla., November 25th, 1912.

*To David Gunsberg, Messrs. Gunsberg & Forgman, and Southwestern Petroleum Company, Buffalo, New York, and J. F. Brett, Esq., their Attorney, Muskogee, Okla.*

Gentlemen: You are hereby notified that any and all drilling operations by you or any of you on the W2 of the NE4 of Section 5, Township 17 North, Range 7 East, of the Indian Meridian, in Creek County, Oklahoma, sometimes called the Eastman Richard property, will be conducted at your peril.

The contest now pending in the Interior Department has not been terminated, the decision by the Assistant Secretary of the Interior being now pending on rehearing in his office. I expect the decision on this rehearing to be in favor of the undersigned, William J. Anicker, but if the Interior Department, through error of law, fails to sustain my contention in that appeal, I shall immediately file a suit in equity for the purpose of declaring the lease or leases in favor of David Gunsburg and the Southwestern Petroleum Company, or any of them, to be held in trust for the undersigned William J. Anicker as having been erroneously approved in favor of said David Gunsberg and the Southwestern Petroleum Company by error of law.

You are further advised that in the event of the success of the undersigned in said case before the Department or in said proceeding in equity, I shall hold responsible you and each of you, and your vendees of all oil that shall be extracted from said property. Yours respectfully, William J. Anicker.

Endorsed: Filed Sep. 30, 1913, R. P. Harrison, Clerk United States District Court, Eastern District Oklahoma.

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And, to-wit, on the 30th day of September, A. D. 1913, the defendants filed Answer to the Amended Bill of Complaint, in words and figures as follows:

**Answer to Amended Bill.**

Come now the defendants, David Gunsburg, and Southwestern Petroleum Company, by and through their counsel, Robert J. Boone, George S. Ramsey and C. L. Thomas, and for their joint and separate answer to the plaintiff's amended petition in this cause, make the following denials, admissions and explanations of the allegations contained in plaintiff's petition, to-wit:

*First Paragraph.*

Defendants admit the age and residence of the plaintiff, and the defendant Gunsburg, and the domicile of the defendant corporation; admit that Eastman Richard is a full-blood citizen of the Creek Nation of Indians, and duly enrolled as such, as alleged; admit that there was allotted to said Eastman Richard, the land described in the petition, and that patents were duly executed and delivered to him, vesting in him his fee simple title in and to the alleged allotment, and that he was the owner in fee thereof at the time of, and prior to, the execution of the various leases for oil and gas mining purposes mentioned in plaintiff's petition; admit that said Eastman Richard did, on the 28th day of March, 1912, execute to plaintiff, on the departmental form, said oil and gas mining lease covering the

> West half (W/2) of the northeast quarter (NE/4) of section five (5),

same being a part of his said allotment; admit that a true copy of said oil and gas mining lease is shown by Exhibit A, but in this connection, defendants say that said copy shown by Exhibit A does not bear the various endorsements made thereon by the Superintendent of the Indian Agency, at Muskogee, Oklahoma, the Commissioner of Indian Affairs, and the Secretary of the Interior showing the action of the Secretary of the Interior on said lease; admit that plaintiff, Anicker, filed the said lease, executed to him by Eastman Richard, in the office of the United States Indian Superintendent at Muskogee, on March 30th, 1912; deny that said lease executed to the plaintiff by Eastman Richard was filed for record in the office of the Register of Deeds in and for Creek County, on April 1st, 1912, and in this connection state that the plaintiff, under the rules and regulations of the Secretary of the Interior applicable thereto, was required to obtain the execution of said lease in quadruplicate parts—that is, the rules and regulations prescribed by the Secretary of the Interior, and then in force, provided: "All leases shall be in quadruplicate, and, with the papers required, shall be filed within thirty days from and after the date of execution by the lessor with the United States Indian Agent, at Union Agency, Muskogee, Oklahoma," and plaintiff, in complying with the rules of the Secretary of the Interior did obtain the execution of said lease from Eastman Richard in quadruplicate parts, and filed all four of said quadruplicate parts in the office of the United States Indian Superintendent at Muskogee, Oklahoma, on March 30th, 1912, but defendants deny that said quadruplicate parts, or either of them, was filed for rec-

ord in the office of the Register of Deeds for Creek County on April 1st, 1912, or at any other time, but state that plaintiff did file in the office of the Register of Deeds of Creek County, on or about April 1st, 1912, a fifth copy of said lease executed by Eastman Richard, but never filed said fifth copy, or fifth part thus executed by Eastman Richard, in the office of the said United States Indian Superintendent, or presented same to the Secretary of the Interior for his approval or disapproval; admit that plaintiff paid to Eastman Richard on March 28th, at the time said lease was executed, the sum of Fifty Dollars ($50.00) in cash; admit that plaintiff agreed to pay Eastman Richard, the lessor, upon approval of the lease by the Secretary, an additional sum of Three Hundred Fifty ($350.) Dollars, as a further bonus for said lease, making the entire bonus Four Hundred ($400.) Dollars; admit that plaintiff did, thereafterwards, deposit with the cashier at Union Agency, Muskogee, Oklahoma, the sum of Seven Hundred Fifty ($750.) Dollars, Three Hundred Fifty ($350.) Dollars of which amount was the balance of the agreed bonus stipulated for between plaintiff and lessor at the time the lease was executed on March 28th, 1912, and the remaining Four Hundred ($400.) Dollars being the increased bid of the plaintiff, under the suggestions of the United States Indian Superintendent that the bonus of Four Hundred ($400.) Dollars agreed upon between plaintiff and the lessor was inadequate. And in this connection, defendants aver and plead that the Fifty ($50.) Dollars paid by the plaintiff to the lessor at the time the lease was executed to him on March 28th, 1912, and agreement to pay Three Hundred Fifty ($350.) Dollars more into the hands of the cashier in the office of the Indian Superintendent at Muskogee, was wholly and entirely inadequate and considered inadequate by the United States Superintendent of Indian Agents, at Muskogee, and, likewise, considered by the Secretary of the Interior as entirely inadequate, but, in order to give the plaintiff an opportunity to be heard in support of his application for the approval of his lease, Honorable Dana H. Kelsey, United States Indian Superintendent at Muskogee did, on May 18th, 1912, with great fairness to the plaintiff, address to the plaintiff a registered letter, which the plaintiff received in due course of mail, in which letter said Indian Superintendent notified the plaintiff "that the oil inspector has submitted a report in connection with the case, advising that in his opinion the bonus of Fifty Dollars paid upon the execution of the lease was inadequate, and that an adequate bonus at that time was Eight Hundred Dollars. Remittance in the sum of Seven Hundred Fifty Dollars additional bonus for the lease should, therefore, be made within

the time above specified. If you fail to make the above remittance, or respond to this letter within the time above designated, it will be presumed that you refuse to pay the amount of bonus considered adequate by this office and have nothing further to submit in connection with the case, and the opinion of this office with respect to these leases will then be rendered as the facts in the case seem to warrant;" defendants aver that the time referred to in the said letter for the deposit of the additional bonus of Seven Hundred Fifty ($750.00) Dollars was ten (10) days from the date of the receipt of the notice by plaintiff; plaintiff thereafterwards deposited, along about the 1st day of June, 1912, said sum of Seven Hundred Fifty ($750.00) Dollars in the office of the United States Indian Superintendent, but defendants aver and plead that said Indian Superintendent did not require plaintiff to deposit said Seven Hundred Fifty ($750.00) Dollars, but merely suggested the deposit of said amount as an additional offer upon plaintiff's part, and defendants aver and plead that neither the Superintendent of the Indian Agency, nor the Secretary of the Interior did anything, or took any steps that committed the Interior Department, or the Secretary, to the endorsement or approval of plaintiff's lease, and defendants aver and plead that it was fully understood by the plaintiff that the deposit of the said Seven Hundred Fifty ($750.00) Dollars additional did not confer upon him any rights to claim anything greater or more than he would have had if he had originally paid the lessor a cash bonus of Eight Hundred ($800.00) Dollars, and the plaintiff did not understand that the said deposit, in any way, estopped the Secretary of the Interior to disapprove his lease.

Defendants admit that on the 20th day of March, 1912, Eastman Richard did execute to them, a similar oil and gas mining lease covering the same eighty (80) acres of land, said lease being on the form prescribed by the Secretary of the Interior, and they admit that they did not file their said lease in the office of the United States Indian Superintendent, at Union Agency, Muskogee, until April 5th, 1912, and admit that they did not file their lease for record in the office of the Register of Deeds for Creek County, the county in which the land is situated, until after the plaintiff obtained his lease on the 28th day of March, 1912.

Defendants deny that any of the sections of Mansfield's Digest of the Laws of Arkansas were in force in the State of Oklahoma during the year 1912, or in anywise applicable to the facts in this case.

Defendants deny that the lease executed to them by Eastman Richard on March 20th, 1912, and referred to in plaintiff's amended petition, is or was null and void as against the plaintiff, for any reason, and especially deny that it was ineffectual against the plaintiff on account of it not having been filed in the office of the United States Indian Superintendent at Muskogee prior to March 28th, 1912, or on that date, and deny that the validity of their lease as against plaintiff was in any way effected by their failure to file their lease in the office of said Indian Superintendent prior to April 5th, 1912, or place their lease of record in the office of the Register of Deeds of Creek County, Oklahoma, at any time. Defendants specifically deny that the plaintiff had no notice of the existence of their said lease executed to them by Eastman Richard on March 20th, 1912, and referred to in plaintiff's amended petition, at the time plaintiff obtained his lease thereafterwards on March 28th, 1912, from the same lessor, and deny that plaintiff had no notice of the existence of their lease at the time he paid the Fifty ($50.00) Dollars to Eastman Richard, the lessor, on March 28th, 1912, and deny that plaintiff had no notice of the existence of their lease at the time the plaintiff deposited the said Seven Hundred Fifty ($750.00) Dollars as additional bonus offer at the office of the said United States Indian Superintendent along in the month of June, 1912. And defendants deny that the Secretary of the Interior found, as a fact, that the plaintiff had, in all respects complied with the requirements of law in and about the making of the lease relied upon by the plaintiff, and they deny that the Secretary of the Interior found that the plaintiff was or is able, capable and willing to perform any and all the obligations incumbent upon him as such lessee thereunder.

Defendants admit that under the law it was necessary to submit both the leases executed by Eastman Richard, to the Secretary of the Interior for his approval, and they admit that said leases were invalid without the approval of the Secretary, and defendants admit that while said leases were pending before the Indian Superintendent at Muskogee, and before the Secretary of the Interior for his approval or disapproval, a contest arose between the plaintiff and these defendants as to which of the two leases should be approved, and they admit that hearings were had before the United States Indian Superintendent at Muskogee in the month of May, 1912, and that the testimony of witnesses was heard, and the case argued by counsel, and the matter taken under advisement by the Indian Superintendent; they admit that the United States Indian Superintendent did, on the 1st day of

July, 1912, render a written decision in said contest, whereby he held and advised that the defendants' lease be approved and that the plaintiff's lease be disapproved, and they admit that the contest proceeded from the office of the Indian Superintendent to the Commissioner of Indian Affairs, and that the Commissioner of Indian Affairs concurred in the recommendations of the United States Indian Superintendent, and they admit that the contest proceeded from the Commissioner of Indian Affairs to the Secretary of the Interior, and that the Secretary of the Interior rendered a written opinion on September 24th, 1912, concurring in the recommendations of the United States Indian Superintendent and the Commissioner of Indian Affairs, and did, upon that date, disapprove the plaintiff's lease and approve defendants' lease; and they admit that plaintiff applied for a re-hearing before the Secretary of the Interior, and that upon said re-hearing the Secretary handed down a written opinion on or about December 9th, 1912, overruling the petition to re-hear, and re-affirming his action taken theretofore in disapproving the plaintiff's lease and approving defendants' lease.

Defendants deny that the Secretary of the Interior committed any error of law in approving defendants' lease and disapproving plaintiff's lease, and deny that the Secretary of the Interior would have approved the plaintiff's lease except for an error of law. Defendants deny that the Secretary of the Interior found, as a fact, or determined, that the plaintiff was a fit person to be the lessee of said land, and deny that the Secretary found that the plaintiff was a bona fide purchaser of the lease executed to him on March 28th, 1912, and deny that the Secretary's action in approving defendants' lease and disapproving plaintiff's lease was based solely upon any error of law, and deny that the Secretary approved the defendants' lease and disapproved the plaintiff's lease solely for the reason that the defendants' lease was prior in date to the plaintiff's lease, and deny that the Secretary of the Interior found that at the time the plaintiff obtained his lease on March 28th, 1912, plaintiff had no notice of the existence of the defendants' lease, and defendants deny that the Secretary, or any of the officials in the Department, through whose hands this contest case passed, held as a matter of law that the recording laws made Anicker an innocent purchaser, or that the fact that Anicker recorded his lease in the county in which the land is situated, and filed his lease in the office of the United States Indian Superintendent, prior to the date defendants filed their lease in the office of the United States Indian Superintendent, constituted the plaintiff a bona fide

purchaser, or in any way affected or controlled the discretion of the Secretary in approving or disapproving whichever lease he saw fit.

Defendants join issue and deny all the assignments of error set forth in plaintiff's amended petition under the letters a, b, c, d, e, f, g, h and i. And in this connection defendants aver and plead that during the contest between the plaintiff and the defendants before the Secretary of the Interior as to which lease should be approved, the plaintiff and the defendants introduced evidence and witnesses who testified before the United States Indian Superintendent, which testimony was transcribed and sent by the United States Indian Superintendent to the Commissioner of Indian Affairs, and by the latter submitted to the Secretary of the Interior, and defendants aver and plead that the record before the Secretary of the Interior failed to show that the plaintiff, Anicker, was an innocent purchaser of his lease on March 28th, 1912, and failed to show that plaintiff, at the time he obtained his lease from Eastman Richard on March 28th, 1912, and paid the Fifty ($50.) Dollars, part consideration therefor, had no notice that prior thereto the defendants had obtained a like departmental lease on this same eighty (80) acres of land.

*Second Paragraph.*

For further defense in their behalf, defendants aver and plead that the testimony and evidence submitted by the respective contestants in the proceeding had before the United States Indian Superintendent at Muskogee, the Commissioner of Indian Affairs, and the Secretary of the Interior, showed that Roy Scales was the agent of the defendants during the month of March, 1912; that as their agent he negotiated and obtained the oil and gas mining lease from Eastman Richard to the defendants on March 20th, 1912; that one Robert Fish was the agent of the plaintiff, Anicker, and as such agent, aided and assisted Anicker in obtaining his lease on March 28th, 1912; that Eastman Richard, prior to the execution by him of the lease to Anicker on March 28th, 1912, told and informed both Anicker and Robert Fish that he, Eastman Richard, had, prior thereto executed an oil and gas mining lease upon the same land to Roy Scales, and defendants therefore aver and plead that the record before the Department of the Interior in said contest affirmatively showed that plaintiff was not a bona fide purchaser of the lease relied upon by him in this case, but purchased said lease with notice of facts sufficient to put him upon inquiry and charge him with implied actual notice of the defendants' lease, and defendants state

that at no time during said proceedings, as shown by the record before the Department of the Interior, was it admitted that the plaintiff was a bona fide purchaser, or found as a fact by the Indian Superintendent, or the Commissioner of Indian Affairs, or the Secretary of the Interior, that plaintiff, Anicker, was a bona fide purchaser of said lease on March 28th, 1912, for a valuable consideration, and without notice of the prior lease executed to these defendants.

*Third Paragraph.*

Defendants for further defense in their behalf aver and plead that at no place did the Secretary of the Interior limit, or undertake to limit, his power and jurisdiction over the leases, and his right to approve or disapprove the plaintiff's lease to the single question of the priority of the respective contesting lessees, but upon the other hand, the Assistant Secretary of the Interior in passing on this matter said: "If there is any advantage in the prior filing of a lease, both having been filed at the agency within the time required by the regulations, Anicker would have that advantage. The act of March 1, 1907 (Stat. L. 34, 1036) makes the filing at Union Agency legal notice. Anicker's lease is stamped as filed at the Agency March 30, 1912. Until approved by the Secretary it was not a completed instrument, and the fact of its having been recorded in a county office cannot estop the Secretary from finding that another lease regularly executed and filed is more for the allottee's interest and better entitled to approval. The motion to re-consider will not be entertained."

*Fourth Paragraph.*

For further defense in their behalf, defendants say that the plaintiff's petition, or bill, as a matter of law, fails to state sufficient facts to constitute a cause of action, and shows on its face that the plaintiff cannot complain of any of the matters and facts therein set forh, nor raise any of the points of law, or questions of fact set forth therein, it appearing that the lease under which plaintiff claims has been disapproved by the Secretary of the Interior. And defendants aver and plead that the United States Indian Superintendent was authorized and directed by the rules prescribed by the Secretary of the Interior to investigate and report to him whether or not the bonus offered by lessees was adequate, and, acting under his authority, the said Indian Superintendent did investigate the adequacy of the bonus of Four Hundred ($400.) Dollars offered by plaintiff, and found and reported it as totally inadequate, and as a consequence thereof,

defendants aver that plaintiff's status and standing before the Interior Department and the Secretary of the Interior was not at any time prior to April 5th, 1912 (the date defendants filed their lease in the office of the United States Indian Superintendent) such as to justify or warrant the approval of his said lease by the Secretary, and defendants aver and plead that plaintiff's lease should have been disapproved, independent of all consideration of their (defendants') lease.

*Fifth Paragraph.*

For further defense in their behalf, defendants say that the plaintiff's petition, or bill, as a matter of law, does not present or tender any justiceable issue.

*Sixth Paragraph.*

Defendants for further defense in their behalf, aver and plead that the lease relied upon by plaintiff, and shown by Exhibit A to the petition, or bill, expressly provides that

> "This indenture of lease made and entered into in quadruplicate on this 28th day of March, 1912, by and between Eastman Richard of Pierce, Oklahoma, enrolled as a full-blood citizen of the Creek Nation, Roll No. 7664, party of the first part, hereinafter designated as lessor, and William J. Anicker of Muskogee, Oklahoma, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1906."

And, further, said lease provides that the lessor "does hereby demise, grant, lease and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior," and said lease further provides, as shown by section eight thereof, as follows:

> "This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: *Provided, however,* that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease."

And defendants therefore aver and plead as a matter of law, that the petition or bill of the plaintiff in this cause considered in connection with Exhibit A thereto, being a copy

of his alleged lease, shows that the courts have no jurisdiction to consider or adjudge any of the matters set forth in plaintiff's petition or bill, and cannot review, set aside, reverse, vacate, amend, or annul, the action of the Secretary of the Interior in approving the defendants' lease in this cause, and have no jurisdiction to approve the plaintiff's lease, or direct and compel the Secretary of the Interior to approve or consider again, the plaintiff's lease.

*Seventh Paragraph.*

Defendants aver and plead, as a matter of law, that the Secretary of the Interior had sole, exclusive and final jurisdiction to decide which of the conflicting leases, that is the plaintiff's or defendants', should be approved, and in the exercise of his jurisdiction, the Secretary of the Interior was clothed with absolute and final discretion, and having exercised that discretion, and approved the defendants' lease, there is no appeal to the Courts, either in law or equity, and the defendants aver and plead that the Secretary of the Interior has heard all the evidence offered by the parties in the contest in his department, and after having heard all the evidence and the argument of counsel, and considered plaintiff's lease, and the defendants' lease, his action on the matter was final, and conclusive on all parties, and not reviewable by a court of equity or law.

*Eighth Paragraph.*

Defendants for further defense in their behalf, aver and plead that the lease relied upon by the plaintiff contains the following provisions, to-wit:

> "The lessee may at any time, by paying to the Indian Superintendent all amounts then due as provided herein and the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder: *Provided,* if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office: *Provided, further,* in event restrictions are removed from all leased premises, the lessee may surrender all the undeveloped portion thereof, by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered."

Wherefore defendants aver and plead that plaintiff's said lease is unilateral and unenforceable in a court of equity in that the plaintiff has, under the terms of his said lease, the power to nullify and render futile the judgment and decree of the court by exercising his right to surrender the lease at any time he may see fit. And defendants aver and plead that it would be inequitable to now permit the plaintiff to have a decree enforcing his lease, and adjudging the defendants trustees of the leasehold for the use and benefit of the plaintiff, defendants as they aver, having acted on the final judgment and decision of the Secretary of the Interior, and invested many thousands of dollars in the exploration and development of said leasehold, and at their expense, and at their risk, proved the value of said leasehold.

*Ninth Paragraph.*

Defendants for further defense in their behalf aver and plead that immediately upon the approval of their lease, the Indian lessor fully ratified and confirmed the action of the Secretary of the Interior in approving the defendants' lease, in that said lessor did, forthwith and immediately after the action of the Secretary of the Interior, and prior to the institution of this suit, demand from the Superintendent of Indian Agents that the bonus paid by defendants, and the royalties accruing under defendants' lease, be paid over to him, and defendants aver and state that said lessor has received prior to the institution of this suit, royalties accruing under said lease held by defendants.

*Wherefore* defendants pray that the plaintiff take nothing in this action, and that they be allowed to go hence with all costs.

GEO. S. RAMSEY,
C. L. THOMAS,
ROBT. J. BOONE,
*Counsel for Defendants.*

Endorsed: Filed Sep. 30, 1913, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

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And, to-wit, on the 1st day of October, A. D. 1913, the plaintiff filed Motion to Strike parts of the Answer of Defendants, in words and figures as follows:

**Motions to Strike Parts of Answer.**

(A) Comes the plaintiff, William J. Anicker, by counsel, and moves the court to strike from the answer of the defendants filed in this cause the following described matter:

"And in this connection, defendants aver and plead that the Fifty ($50) Dollars paid by the plaintiff to the lessor at the time the lease was executed to him on March 28th, 1912, and agreement to pay Three Hundred Fifty ($350.) Dollars more into the hands of the cashier in the office of the Indian Superintendent at Muskogee, was wholly and entirely inadequate and considered inadequate by the United States Superintendent of Indian Agents, at Muskogee, and, likewise, considered by the Secretary of the Interior as entirely inadequate, but, in order to give this plaintiff an opportunity to be heard in support of his application for the approval of his lease, Honorable Dana H. Kelsey, United States Indian Superintendent at Muskogee did, on May 18th, 1912, with great fairness to the plaintiff, address to the plaintiff a registered letter, which the plaintiff received in due course of mail, in which letter said Indian Superintendent notified the plaintiff 'that the oil inspector has submitted a report in connection with the case, advising that in his opinion the bonus of Fifty Dollars paid upon the execution of the lease was inadequate, and that an adequate bonus at that time was Eight Hundred Dollars. Remittance in the sum of Seven Hundred Fifty Dollars additional bonus for the lease should, therefore, be made within the time above specified. If you fail to make the above remittance, or respond to this letter within the time above designated, it will be presumed that you refuse to pay the amount of bonus considered adequate by this office and have nothing further to submit in connection with the case, and the opinion of this office with respect to these leases will then be rendered as the facts in the case seem to warrant,' defendants aver that the time referred to in the said letter for the deposit of the additional bonus of Seven Hundred Fifty ($750.00) Dollars was ten (10) days from the date of the receipt of the notice by plaintiff; plaintiff thereafterwards deposited, along about the 1st day of June, 1912, said sum of Seven Hundred Fifty ($750.00) Dollars in the office of the United States Indian Superintendent, but defendants aver and plead that said Indian Superintendent did not require plaintiff to deposit said Seven Hundred Fifty ($750.00) Dollars, but merely suggested the deposit of said amount as an additional offer upon plaintiff's part, and defendants aver and plead that neither the Superintendent of the Indian Agency, nor the Secretary of the Interior did anything, or took any steps that committed the Interior Department, or the Secretary, to the endorsement or approval of plaintiff's lease,

and defendants aver and plead that it was fully understood by the plaintiff that the deposit of the Seven Hundred Fifty ($750.00) Dollars additional did not confer upon him any rights to claim anything greater or more than he would have had if he had originally paid the lessor a cash bonus of Eight Hundred ($800.00) Dollars, and the plaintiff did not understand that the said deposit, in any way, estopped the Secretary of the Interior to disapprove his lease,"

upon the following grounds:

1. Because said matter is impertinent to the issue.

2. Because said matter is not responsive to any issue tendered by the bill.

3. Because the bill of complaint presents a simple question of law in this case for this court to determine whether the decision of the Secretary of the Interior in said law question was right or wrong and defendants by said matter sought to be excluded seek improperly to inject issues of fact into this case which have been concluded by the decisions of the Secretary of the Interior, which decisions are pleaded by the bill of complaint and are admitted in the answer of the defendants.

4. Because said matter does not present any proper defense to the amended bill.

5. Because said matter is merely a legal argument and not a proper matter of defensive allegation.

6. Because the same states no issues in the matter that ought in law to defeat plaintiff's action.

7. Because defendants caused removal of this cause to this court upon the grounds that the decision of this cause depended upon a Federal question of law and they ought not now to be permitted to inject into this case questions of fact in the attempt to have the case decided upon said questions of fact without deciding said questions of law upon which the jurisdiction of this court was invoked by the defendants.

(B) Plaintiff moves the court to strike out of the answer of the defendants the following matter contained therein

"Defendants specifically deny that the plaintiff had no notice of the existence of their said lease executed to them by Eastman Richard on March 20th, 1912, and re-

ferred to in plaintiff's amended petition, at the time plaintiff obtained his lease thereafterwards on March 28th, 1912, from the same lessor, and deny that plaintiff had no notice of the existence of their lease at the time be paid the Fifty ($50.00) Dollars to Eastman Richard, the lessor, on March 28th, 1912, and deny that plaintiff had no notice of the existence of their lease at the time the plaintiff deposited the said Seven Hundred Fifty ($750.00) Dollars as additional bonus offer at the office of the said United States Indian Superintendent along in the month of June, 1912,"

upon the same grounds hereinabove assigned to Motion A.

(C) Plaintiff moves the court to strike out of the answer of the defendants the following matter contained therein

"and they admit that said leases were invalid without the approval of the Secretary,"

upon the same grounds hereinabove assigned to Motion A.

(D) Plaintiff moves the court to strike out of the answer of the defendants the following matter contained therein

"And in this connection defendants aver and plead that during the contest between the plaintiff and the defendants before the Secretary of the Interior as to which lease should be approved, the plaintiff and the defendants introduced evidence and witnesses who testified before the United States Indian Superintendent, which testimony was transcribed and sent by the United States Indian Superintendent, to the Commissioner of Indian Affairs, and by the latter submitted to the Secretary of the Interior, and defendants aver and plead that the record before the Secretary of the Interior failed to show that the plaintiff, Anicker, was an innocent purchaser of his lease on March 28th, 1912, and failed to show that plaintiff, at the time he obtained his lease from Eastman Richard on March 28th, 1912, and paid the Fifty ($50.) Dollars, part consideration therefor, had no notice that prior thereto the defendants had obtained a like departmental lease on this same eighty (80) acres of land,"

upon the same grounds hereinabove assigned to Motion A.

(E) Plaintiff moves the court to strike out of the second paragraph of the answer of the defendants the following matter contained therein

"For further defense in their behalf, defendants aver and plead that the testimony and evidence submitted by the respective contestants in the proceeding had before the United States Indian Superintendent at Muskogee, the Commissioner of Indian Affairs, and the Secretary of the Interior, showed that Roy Scales was the agent of the defendants during the month of March, 1912; that as their agent he negotiated and obtained the oil and gas mining lease from Eastman Richard to the defendants on March 20th, 1912; that one Robert Fish was the agent of the plaintiff, Anicker, and as such agent, aided and assisted Anicker in obtaining his lease on March 26th, 1912; that Eastman Richard, prior to the execution by him of the lease to Anicker on March 28th, 1912, told and informed both Anicker and Robert Fish that he, Eastman Richard, had, prior thereto executed an oil and gas mining lease upon the same land to Roy Scales, and defendants therefore aver and plead that the record before the Department of the Interior in said contest affirmatively showed that plaintiff was not a bona fide purchaser of the lease relied upon by him in this case, but purchased said lease with notice of facts sufficient to put him upon inquiry and charge him with implied actual notice of the defendants' lease, and defendants state that at no time during said proceedings, as shown by the record before the Department of the Interior, was it admitted that the plaintiff was a bona fide purchaser, or found as a fact by the Indian Superintendent, or the Commissioner of Indian Affairs, or the Secretary of the Interior, that plaintiff, Anicker, was a bona fide purchaser of said lease on March 28th, 1912, for a valuable consideration, and without notice of the prior lease executed by these defendants."

upon the same grounds hereinabove assigned to Motion A.

(F) Plaintiff moves the court to strike out of the third paragraph of the answer of the defendants the following matter contained therein

"Defendants for further defense in their behalf aver and plead that at no place did the Secretary of the Interior limit, or undertake to limit, his power and jurisdiction over the lessee, and his right to approve or disapprove the plaintiff's lease to the single question of the priority of the respective contesting lessees, but upon the other hand, the Assistant Secretary of the Interior in passing on this matter said: 'If there is any advantage in the

prior filing of a lease, both having been filed at the agency within the time required by the regulations, Anicker would have that advantage. The Act of March 1, 1907 (Stat. L. 34, 1036) makes the filing at Union Agency legal notice. Anicker's lease is stamped as filed at the Agency March 30, 1912. Until approved by the Secretary it was not a completed instrument, and the fact of its having been recorded in a county office cannot estop the Secretary from finding that another lease regularly executed and filed is more for the allottee's interest and better entitled to approval. The motion to reconsider will not be entertained',"

upon the same grounds hereinabove assigned to Motion A.

(G) Plaintiff moves the court to strike out of the fourth paragraph of answer of the defendants the following matter contained therein

"For further defense in their behalf, defendants say that the plaintiff's petition, or bill, as a matter of law, fails to state sufficient facts to constitute a cause of action, and shows on its face that the plaintiff cannot complain of any of the matters and facts therein set forth, nor raise any of the points of law, or questions of fact set forth therein, it appearing that the lease under which plaintiff claims has been disapproved by the Secretary of the Interior. And defendants aver and plead that the United States Indian Superintendent was authorized and directed by the rules prescribed by the Secretary of the Interior to investigate and report to him whether or not the bonus offered by lessees was adequate, and, acting under his authority, the said Indian Superintendent did investigate the adequacy of the bonus of Four Hundred ($400) Dollars offered by plaintiff, and found and reported it as totally inadequate, and as a consequence thereof, defendants aver that plaintiff's status and standing before the Interior Department and the Secretary of the Interior was not at any time prior to April 5th, 1912 (the date defendants filed their lease in the office of the United States Indian Superintendent) such as to justify or warrant the approval of his said lease by the Secretary, and defendants aver and plead that plaintiff's lease should have been disapproved, independent of all consideration of their (defendants') lease,"

upon the same grounds hereinabove assigned to Motion A.

(H) Plaintiff moves the court to strike out of the fifth paragraph of the answer of the defendants the following matter contained therein

> "For further defense in their behalf, defendants say that the plaintiff's petition, or bill, as a matter of law, does not present or tender any justiceable issue,"

upon the same grounds hereinabove assigned to Motion A.

(I) Plaintiff moves the court to strike out of the sixth paragraph of the answer of the defendants the following matter contained therein

> "Defendants for further defense in their behalf, aver and plead that the lease relied upon by plaintiff, and shown by Exhibit A to the petition, or bill, expressly provides that
>
> > 'This indenture of lease made and entered into in quadruplicate on this 28th day of March, 1912, by and between Eastman Richard of Pierce, Oklahoma, enrolled as a full-blood citizen of the Creek Nation, Roll No. 7664, party of the first part, hereinafter designated as lessor, and William J. Anicker of Muskogee, Oklahoma, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908.'
>
> And, further, said lease provides that the lessor 'does hereby demise, grant, lease and let unto the lessee, for the term of ten years from the date of the approval hereof, by the Secretary of the Interior,' and said lease further provides, as shown by section eight thereof, as follows:
>
> > 'This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: *Provided, however*, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of lessee, shall operate to affect the terms and conditions of this lease.'
>
> And defendants therefore aver and plead as a matter of law, that the petition or bill of the plaintiff in this cause considered in connection with Exhibit A thereto,

being a copy of his alleged lease, shows that the courts have no jurisdiction to consider or adjudge any of the matters set forth in plaintiff's petition or bill, and cannot review, set aside, reverse, vacate, amend, or annul, the action of the Secretary of the Interior in approving the defendant's lease in this cause, and have no jurisdiction to approve the plaintiff's lease, or direct and compel the Secretary of the Interior to approve or consider again, the plaintiff's lease,"

upon the same grounds hereinabove assigned to Motion A.

(J) Plaintiff moves the court to strike out of the seventh paragraph of the answer of the defendants the following matter contained therein

"Defendants aver and plead, as a matter of law, that the Secretary of the Interior had sole, exclusive and final jurisdiction to decide which of the conflicting leases, that is the plaintiff's or defendants', should be approved, and in the exercise of his jurisdiction, the Secretary of the Interior was clothed with absolute and final discretion, and having exercised that discretion, and approved the defendants' lease, there is no appeal to the courts, either in law or equity, and the defendants aver and plead that the Secretary of the Interior has heard all the evidence offered by the parties in the contest in his department, and after having heard all the evidence and the argument of counsel, and considered plaintiff's lease, and the defendants' lease, his action on the matter was final, and conclusive on all parties, and not reviewable by a court of equity or law."

upon the same grounds hereinabove assigned to Motion A.

(K) Plaintiff moves the court to strike out of the eighth paragraph of the answer of the defendants the following matter contained therein

"Defendants for further defense in their behalf, aver and plead that the lease relied upon by the plaintiff contains the following provisions, to-wit:

'The lessee may at any time, by paying to the Indian Superintendent all amounts then due as provided herein and the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder; *Provided*, if this lease has been recorded lessee shall ex-

ecute a release and record the same in the proper county recording office: *Provided, further,* in event restrictions are removed from all leased premises, the lessee may surrender all the undeveloped portion thereof, by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.'

Wherefore defendants aver and plead that plaintiff's said lease is unilateral and unenforcable in a court of equity in that the plaintiff has, under the terms of his said lease, the power to nullify and render futile the judgment and decree of the court by exercising his right to surrender the lease at any time he may see fit. And defendants aver and plead that it would be inequitable to now permit the plaintiff to have a decree enforcing his lease, and adjudging the defendants trustees of the leasehold for the use and benefit of the plaintiff, defendants as they aver, having acted on the final judgment and decision of the Secretary of the Interior, and invested many thousands of dollars in the exploration and development of said leasehold, and at their expense, and at their risk, proved the value of said leasehold,"

upon the same grounds hereinabove assigned to Motion A.

ZEVELY, GIVENS & STOUTZ
FURRY & MOTTER,
*Attorneys for Plaintiff.*

Endorsed: Filed Oct. 1, 1913, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

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And, to-wit, on the 3rd day of October, A. D. 1913, defendants filed Amendment to Defendants' Answer to Plaintiff's Amended Petition, in words and figures as follows:

**Amendment to Answer of Defendants to Plaintiff's Amended Bill.**

Come now the defendants, and show the court that about three o'clock P. M. Monday, September 29th, 1913, plaintiff's counsel served on their counsel a copy of a proposed amended petition in this case; that this case, after several postponements, none of which delay was at the request of themselves, or their counsel, had been previously thereto set for

trial on the merits on Tuesday, September 30th, 1913; that being extremely anxious to have this case heard and disposed of in this court, their counsel immediately upon receiving copy of the proposed amended petition or bill dictated the answer to said amended petition filed by them on September 30th, 1913; that in view of shape plaintiff has now by his amended petition sought to mould the issues it is important and material to their defense and rights that they be allowed to add the following by way of amendment to their said answer to plaintiff's amended petition filed in this case on September 30th, 1913, so as to aver and plead the following, to-wit:

"And defendants aver and plead that the conceded facts established without dispute by the evidence before the Department of the Interior in said contest showed that the plaintiff, Anicker, did not purchase the lease under which he claims from Eastman Richard on March 28th, 1912, and pay the Fifty ($50.) Dollars cash consideration therefor, without actual notice and implied actual notice of the defendants' prior lease, and the defendants aver and plead that the undisputed evidence before the Department of the Interior in said contest showed that the bonus offered by the plaintiff, to-wit: Four Hundred ($400.) Dollars, Fifty ($50.) Dollars of which was paid in cash, for the lease, was wholly inadequate, and that the Secretary of the Interior would not have and should not have approved his lease for such inadequate cash bonus, and defendants aver and plead that any finding of fact by the officers of the Department of the Interior and the Secretary of the Interior to the effect that the plainiff was a bona fide purchaser of his lease or that the plaintiff at the time he purchased his lease on March 28th, 1912, and paid the Fifty ($50.00) Dollars therefor, had no notice of the prior lease to these defendants, was a gross mistake of fact, and that by a gross mistake of law the Secretary of the Interior and the officers in his Department through whose official hands the contest proceeded, fell into a misapprehension of the facts proved before them, and defendants aver and plead that the undisputed evidence submitted to the Department in said contest showed that the plaintiff, on March 28th, 1912, at the time he took said lease and paid Fifty ($50.) Dollars cash therefor, had actual notice of defendants' prior lease; and the defendants in support of the defenses set up in this answer, especially the defenses set up in paragraph two and paragraph four, herewith file, as Exhibit A to this answer, a complete transcript of the record in said contest before the Department of

the Interior, including the testimony of the witnesses, all the evidence, the written arguments of counsel, the reports, findings and opinions of the United States Indian Superintendent at Muskogee, Commissioner of Indian Affairs, and the Secretary of the Interior, and defendants herewith make said certified copy of the record before the Department in said contest Exhibit A to this answer, and as a part hereof."

*Wherefore*, defendants move the court to allow the above amendment to their said answer.

GEO. S. RAMSEY,
C. L. THOMAS,
ROBT. J. BOONE,
*Attorneys for Defendants.*

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## EXHIBIT "A" TO AMENDMENT TO DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED BILL.

*In the District Court of the United States for the Eastern District of Oklahoma. William J. Anicker, Plaintiff*, v. *David Gunsburg and the Southwestern Petroleum Co., Defendants.* No. 1951, Equity.

STIPULATION OF COUNSEL.

In order to shorten the record in this case it is hereby agreed and stipulated between counsel for the plaintiff, Zevely, Givens & Stoutz, and J. B. Furry, and counsel for the defendants, George S. Ramsey, Robert J. Boone and C. L. Thomas, as follows:

First: That the allottee, Eastman Richard, at the time of the execution of the Departmental lease to the plaintiff Anicker on March 28, 1912, not only executed said lease on the Departmental form in quadruplicate parts but did also execute a fifth part upon the same form, and it is agreed that the plaintiff filed the quadruplicate parts of said lease in the office of the Indian Agent at Muskogee, Oklahoma, as alleged in his bill and that he also did thereafterwards and on April 1, 1912, filed for record the fifth part or copy of said Departmental lease in the office of the Register of Deeds for Creek County, Oklahoma, that being the county in which the land is situate, but the said fifth part of said lease filed and recorded in the office of the Register of Deeds of Creek County was never submitted to the Secretary of the Interior for his approval or disapproval.

Second: That the following is a correct copy of certain original correspondence in the record before the Secretary of the Interior, to-wit:

(Copy)

GAW M. E. S. CIB H3

"DEPARTMENT OF THE INTERIOR.

I. T. *Office of Indian Affairs.*

Washington, July 1, 1907.

THE UNITED STATES INDIAN AGENT,

*Union Agency,* Muskogee, Ind. Ter.

SIR: The Office is in receipt of a memorandum from the Acting Secretary of the Interior saying that there has been brought to his attention several leases covering a tract of land in Glenn Pool, Creek Nation, which leases were made by Ma ha la Adams, Martha Sevier, and Cleveland Grayson, in favor of the Creek Oil & Gas Company; that it appears that the bonus to be paid is only a thousand dollars; and that from this he concludes that the bonus may be inadequate when the fact is considered that many leases in the Glenn Pool have been sold for several thousand dollars bonus. He requests that you be instructed to take special note as to the adequacy of bonuses, taking into account the time at which the leases were executed.

You are requested to comply with the Department's instructions and because of your position in the field you should be more able to form a just conclusion as to the adequacy of bonus at the time the lease was taken than this Office. You will therefore, in transmitting leases, state specifically in your report whether you believe the bonus paid or agreed to be paid was adequate at the time the lease was entered into, and in order that the office and the Department may be fully advised, you are enjoined to be particularly careful in this respect in order that no complaints may arise.

Very Respectfully,

(Signed) C. F. Larrabee,

GAW-GH Acting Commissioner.

Through the Inspector, for Indian Territory.

I, the officer in charge of the United States Indian Agency, Union Agency, Muskogee, Oklahoma, and having the care and custody of the records thereof, do hereby certify that the above and foregoing letter is a full, true

and correct copy of said letter from the Acting Commissioner, C. F. Larrabee, as shown by the records of said office.

Dated at Muskogee, Oklahoma, this 19 day of September, 1913.

Dana H. Kelsey,
United States Indian Superintendent.
By R. S. Cate, Chief Clerk."

By this Departmental order of July 1, 1907, the Indian Superintendent was required to investigate and report upon the adequacy of the bonus paid, and in accordance with this order, and the long continued practice in the Department, Honorable Dana H. Kelsey did, on April 12, 1912, address to D. C. Morrison, Oil Inspector, a letter directing said Oil Inspector to

"make a report, in quintriplicate, as to the adequacy of the bonus paid and the bonus value of the land at the time of your investigation."

The superintendent's said letter to the oil inspector is as follows:

"Leases 22293, 22518, 22568, 22601.

Subject: Request investigation as to bonus value of said lands.

April 12, 1912.

Mr. D. C. Morrison, Oil Inspector,
Muskogee, Oklahoma.

SIR: There has been filed with this office various oil and gas mining leases executed by Eastman Richards, a Creek citizen, as follows:

No. 22293, in favor of the Eastern Oil Company, dated November 29, 1911, filed January 13, 1912, covering the NE/4 of Sec. 5, T. 17 N., R. 7 E. Bonus $80.00.

No. 22518, in favor of A. L. Funk and O. E. Riter, dated March 20, 1912, filed March 22, 1912, covering the E/2 of NE/4 of Sec. 5, T. 17 N., R. 7 E. Bonus $80.00.

No. 22568, in favor of William J. Anicker, dated March 28, 1912, filed March 30, 1912, covering the W/2 of NE/4 of Sec. 5, T. 17 N., R. 7 E. Bonus $400.00.

No. 22601, in favor of David Gunsburg and Southwestern Petroleum Company, dated March 20,

1912, filed April 5, 1912, covering the W/2 of NE/4 of Sec. 5, T. 17 N., R. 12 E. Bonus $80.00.

You will observe that these leases conflict and in order that the office might determine the rights of the respective lessees, it is desired that you make a report, in quintriplicate, as to the adequacy of the bonus paid and and the bonus value of the land at the time of your investigation.

Respectfully,

.....

Acting United States Indian Superintendent."
FGJ-AED.

In accordance therewith, and on May 16, 1912, the oil inspector submitted to the superintendent, the following reply:

"Received Union Agency May 17 1912 Enclosure To No. 28961

Leases Nos. 22293, 22518, 22568, 22601.

Subject: Report in re adequacy of bonus.

May 16, 1912.

Mr. Dana H. Kelsey, U. S. Indian Supt.,

Muskogee, Okla.

SIR: Complying with request of office letter of April 12, 1912, for report in re adequacy of bonus on the following oil and gas mining leases executed by Eastman Richards, a Creek citizen, as follows:

No. 22293, in favor of the Eastern Oil Company, dated Nov. 29, 1911, filed January 13, 1912, covering the NE/4 of Sec. 5, T. 17 N., R. 7. E. Bonus $80.00;

No. 22518, in favor of A. L. Funk and O. E. Riter, dated March 20, 1912, filed March 22, 1912, covering the E/2 of NE/4 of Sec. 5, T. 17 N., R. 7 E. Bonus $80.00;

No. 22568, in favor of William J. Anicker, dated March 28, 1912, filed March 30, 1912, covering the W/2 of NE/4 of Sec. 5, T. 17 N., R. 7. E. Bonus $400.00;

No. 22601, in favor of David Gunsburg and Southwestern Petroleum Co., dated March 20, 1912, filed April 5, 1912, covering the W/2 of NE/4 of Sec. 5, T. 17 N., R. 7 E. Bonus $80.00.

I beg to report that I have investigated said matters and find as follows:

That the first well drilled in the vicinity of said land was completed about the middle of January in Sec. 28-18-7. This well was drilled to a depth of 3000 feet. They got what is now known as the 2200-foot sand at the proper depth and after drilling to a depth of 3000 feet, the well was plugged back to the 2200-foot sand and in an effort to shoot the well, a shell of nitroglycerine lodged in the hole at a depth of about 1200 feet and exploded, thus ruining the well. This well was plugged prior to the commencement of the well in 32-18-7.

What is known as the Slick & Jones well in 32-18-7 was commenced Jan. 22, 1912. Oil was struck in this well on or about March 17th or 18th, but this fact was not generally known until March 19th. For a few days before this and up to March 19th this well was reported to be making a large quantity of salt water, when, as a matter of fact, it was making considerable oil. This was just at the top of the sand and there was considerable gas coming with it. About half a screw was run into the sand and the first 24 hours the well was reported to be making more than 200 barrels of oil. This well is now conservatively estimated to be making from 100 to 125 barrels of oil.

On or about Feb. 1st a well was started in Sec. 34-18-7 by C. J. Wrightsman. On March 26th a flow of gas was struck in this well which was estimated to be about 5 million cubic feet per day. The well was left open for a few days, after which they drilled a little deeper into the sand and the flow of gas was increased to about 12 million cubic feet per day and was spraying considerable oil, variously estimated at from 20 to 50 barrels per day. This well has since been drilled deeper and is now making from 18 to 20 million cubic feet of gas per day, but there is no increase in the amount of oil.

At the time lease No. 22293, in favor of the Eastern Oil Co., dated Nov. 29, 1911, was executed there had been no developments for oil or gas within several miles of the above land and it was in what was then known as 'wild cat' territory, and the land was worth but a nominal consideration for oil and gas mining purposes at that time. I am of the opinion that the bonus paid ($80.00) for said NE 4 of Sec. 5-17-7 was a fair and adequate bonus consideration for said lease at the time it was taken.

With reference to lease No. 22518 in favor of A. L. Funk and O. E. Riter, dated March 10, 1912, covering

the E/2 of the NE/4 of Sec. 5-17-7, and lease No. 22601 in favor of David Gunsburg and the Southwestern Petroleum Co., dated March 20, 1912, covering the W/2 of the NE/4 of Sec. 5-17-7, it was generally known that oil had been struck in said Slick & Jones well in Sec. 32-18-7, the Wrightsman well in Sec. 34-18-7 was drilling and there was considerable activity in the matter of taking leases in the vicinity of said land, and I am of the opinion, in view of all the facts and conditions relative to the above matter, that $80, the bonus consideration paid for each of these leases, was an inadequate bonus consideration on the dates, respectively, that said lease were executed. I am also of the opinion that a fair and adequate bonus consideration for these leases on the dates, respectively, on which they were executed was $600 each, or at the rate of $7.50 per acre.

At the time lease No. 22568 in favor of Wm. J. Anicker, dated March 28, 1912, covering the W/2 of the NE/4 of Sec. 5-17-7 was executed, gas had been struck in the Wrightsman well in Sec. 34-18-7 and leases were worth considerably more in this locality at that time than they were on March 20 or 22nd, 1912. I am therefore of the opinion, taking all the facts and conditions relative to the above matter into consideration, that the bonus of $400 paid for this lease on the date of execution thereof was inadequate, and that a fair and adequate bonus consideration for said lease on said date was $800.

I respectfully recommend that on whatever leases additional bonus consideration is recommended, the lessee be required to pay said additional bonus consideration as a condition precedent to favorable recommendation of the same. Respectfully,

D. C. Morrison,

U. S. Oil Inspector."

It seems that counsel for Eastman Richard, the lessor, were contending before the Department, that the oil inspector's report as to the adequacy of bonus, did not report a sufficient amount of bonus, and that the lessor was entitled to more.

Thereafterwards, the oil inspector submitted a supplemental report in the way of a letter to the Indian Superintendent, dated May 28, 1912. Said letter of May 28, 1912, is as follows:

"Received Union Agency May 29 1912 Enclosure to No. 31522.

Lease Nos. 22293, 22518, 22568, 22601.

Subject: Report in re adequacy of bonus on leases covering allotment of Eastman Richards.

DCM/B

May 28, 1912.

Mr. Dana H. Kelsey, U. S. Indian Supt.,
Muskogee, Okla.

SIR: Referring to the matter of adequacy of bonus on leases Nos. 22293, 22518, 22568 and 22601, and to statements made by Messrs. Lucas & Tabor, attorneys for Eastman Richards, as to bonuses paid for oil and gas mining leases in the vicinity of said Eastman Richards land, would say that while it is true that higher bonuses were paid for oil and gas mining leases than those suggested by me in my report of May 16, 1912, for the Eastman Richards lease, it is also true that these bonuses were paid at a later date, to-wit, from April 12, 1912, to May 13, 1912, and cover property in which there were no conflicting interests.

On March 20, 1912, the date of lease No. 22518 in favor of A. L. Funk and O. E. Riter, and lease No. 22601 in favor of David Gunsburg and the Southwestern Petroleum Co., but little was known about the Slick and Jones well in section 32-18-7 except that oil had been struck. They were drilling on the Wrightsman well in 34-18-7, but neither oil nor gas had been struck in the Wrightsman well. On March 26th, however, a small flow of gas was struck in the Wrightsman well. This well was allowed to blow for a few days and this was the condition of this well when the lease to W. J. Anicker was taken, hence an additional bonus of $200 (a total of $800) was placed upon the W. J. Anicker lease, No. 22568. There was also more of a demand for leases on March 28th than there was on March 20th.

Between March 20, 1912, and April 10, 1912, additional drilling was done on both the Slick & Jones well and the Wrightsman well, and by the latter date the Slick & Jones well was reported to be good for 200 barrels of oil per day and the Wrightsman well was making about twelve million cubic feet of gas per day and spraying oil variously estimated at from twenty to fifty barrels per day. This, together with the fact that the strike had been widely advertised, ran bonus value up until the high bonus values referred to by Messrs. Lucas & Tabor were paid.

Up to the present time I have not placed a bonus value on said Eastern Oil Company's lease as of a later date than Nov. 29, 1911, as I have never been requested to do so. There is no doubt, however, but that an oil and gas mining lease covering said land, with no conflicting leases covering the same land, would have been worth from $5000 to $6000 on April 10, 1912.

I am of the opinion that, under existing conditions an oil and gas mining lease covering all of said allotment on April 10, 1912, would have been worth from $3000 to $4000. The fact that there were conflicting interests, however, and that no lease would, in all probability, be approved until the property might be condemned by drilling on adjacent lands, depreciated the bonus value of said lease to a considerable extent. All of these facts were taken into consideration by me when I placed the bonus values thereon in my report of May 16, 1912.

I see no good reason for changing or modifying my report heretofore made, except as herein stated, relative to bonus values on the Eastman Richards allotment.

Respectfully,

D. C. Morrison,
U. S. Oil Inspector."

Upon the superintendent's receipt of the letter of May 16, 1912, from the oil inspector, the Indian superintendent sent the following letter to the defendants:

"Lease No. 22293 et al FHW DCH 5-18-12 Register
Enclosure May 12, 1912.

Subject: Conflicting leases of Eastman Richards.

David Gunsburg and Southwestern Petroleum Company
% Roy E. Scales, Agent,
Tulsa, Oklahoma.

Sirs: There is enclosed copy of the testimony taken at a hearing at Union Agency, Muskogee, Oklahoma, on May 13, and May 14, 1912, in the matter of conflicting leases, executed by Eastman Richards, as follows:

| *Lease No.* | *Lessee.* |
|---|---|
| 22293 | Eastern Oil Company |
| 22518 | Funk & Riter |
| 22568 | William J. Anicker |
| 22601 | Yourselves. |

You will be allowed ten days from the date upon which this notice is received within which to file such brief or argument as you may feel disposed to present in sup-

port of your contention that the lease executed in your favor should be approved.

You are also advised that the Oil Inspector has submitted a report in connection with the case, advising that the bonus of $80.00 paid upon the execution of the lease was, in his opinion, inadequate and that an adequate bonus at that time was at least $600.00.

Remittance in the sum of $520.00 additional bonus for the lease should therefore be made within the time above specified.

If you fail to make the above remittance or respond to this letter within the time above designated, it will be presumed that you refuse to pay the amount of bonus considered adequate by this office and have nothing further to submit in connection with the case, and the opinion of this office with reference to these leases will then be rendered as the facts in the case may seem to warrant.

Respectfully,

(Signed) Dana H. Kelsey,

United States Indian Superintendent."

On May 18, 1912, the Indian superintendent sent the following letter to the plaintiff:

"Lease May 18/12 FHW MLG REGISTER.
Subject: Conflicting leases of Eastman Richards.

Mr. William J. Anicker, May 18, 1912.

C/ Roach & Bradley, Attys.,

Muskogee, Oklahoma.

Sirs: There is inclosed copy of the testimony taken at a hearing at Union Agency, Muskogee, Oklahoma, on May 13th and May 14th, 1912, in the matter of conflicting leases, executed by Eastman Richards as follows:

| | |
|---|---|
| 22293 | Eastern Oil Co., lessee, |
| 22518 | Funk & Riter, |
| 22568 | William J. Anicker, |
| 22601 | David Gunsburg & Southwestern Petroleum Company. |

You will be allowed ten days from the date upon which this notice is received within which to file such brief or argument as you may feel disposed to present in support of your contention that the lease executed in your favor should be approved.

You are also advised that the Oil Inspector has sub-

mitted a report in connection with the case, advising that in his opinion the bonus of $50.00 paid upon the execution of the lease was inadequate and that an adequate bonus at that time was $800.00.

Remittance in the sum of $750.00 additional bonus for the lease should, therefore, be made within the time above specified.

If you fail to make the above remittance or respond to this letter within the time above designated, it will be presumed that you refuse to pay the amount of bonus considered adequate by this office and have nothing further to submit in connection with the case, and the opinion of this office with reference to these leases will then be rendered as the facts in the case seem to warrant.

Respectfully,

(Signed) Dana H. Kelsey,
United States Indian Superintendent."

In response thereto, the plaintiff did, on June 1st, 1912, as shown by the following letter, send to the Indian superintendent, New York draft for $750.00.

"Received Union Agency Jun 1 1912. No. 32052.

June 1st 1912.

Dana H. Kelsey, U. S. Indian Supt.,

Muskogee, Okla.

Dear Sir: Inclosed please find N. Y. draft for $750.00 which is additional bonus on a certain Oil & Gas lease executed by Eastman Richard in favor of William J. Anicker, which is in the Department for approval or disapproval.

Said bonus to be turned over to Eastman Richard when lease is approved, otherwise returned.

Said O & G lease covers the W2 of the NE/4 of 5-17-7.

Very truly yours,

22568 Wm. J. Anicker."

Third. It is also agreed that Exhibit "C" hereto attached is a true copy of a letter and report of the United States Indian Superintendent *writed* on July 18, 1912, and with certain papers made exhibits to Plaintiff's Amended Petition was sent to Commission of Indian Affairs.

Fourth. It is also agreed that Exhibit A to this stipulation is a correct copy of all the testimony of the witnesses before the Department of the Interior and also a true copy

of the affidavit of Eastman Richard referred to in the testimony and also a correct copy of the affidavit of William J. Anicker referred to in the testimony and it is agreed that Exhibit A hereto attached and the correspondence set out under the second stipulation above constituted all the evidence before the Secretary of the Interior.

And it is agreed that this stipulation may be treated as Exhibit A to the defendants' amendment to their answer to the plaintiff's amended petition and for a substitute for said Exhibit A and be a part of the record on the trial of this cause on the merits, subject to the plaintiff's legal objections interposed to the allowance of the amendment in the first instance.

J. W. ZEVELY, J. M. GIVENS,
R. W. STOUTZ,
J. B. FURRY, *Counsel for Plff.*

GEO. S. RAMSEY,
ROBT. J. BOONE,
C. L. THOMAS, *Counsel for Defs.*

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## EXHIBIT "A" TO STIPULATION OF COUNSEL AS ABOVE SHOWN.

Department of the Interior, United States Indian Superintendent, Union Agency, Muskogee, Oklahoma.—In the matter of a hearing on conflicting leases executed by Eastman Richards.

At a hearing held in the office of the United States Indian Superintendent, Muskogee, Oklahoma, May 13, 1912, before F. H. Walkup, representing the Union Agency, there was present the following:

Eastern Oil Company, represented by Butte, Boone and Lattimore, by Mr. Lattimore, with prior consent of Gunsburg and Southwestern Petroleum Company.

A. L. Funk & O. E. Riter, by A. J. Ward, Attorney.

David Gunsburg & Foreman by Roy E. Scales, Agent.

Wm. J. Anicker, by Roach & Broadley, Attorneys, by Mr. Bradley.

Eastman Richard, by Lucas & Tabor, Attorneys, by Mr. Tabor.

D. C. Morrison, Oil Inspector, Union Agency.

By Mr. Bradley:

Mr. Anicker asks for a continuance of ten days in order to secure the attendance of important and material witnesses to give testimony in support of his lease.

By Mr. Tabor:

We should like to have the record show objection to the continuance for the reason that notice has been served on all parties in interest, and they should have been prepared at this time.

By Mr. Walkup:

The request for a continuance will be overruled, but it will be considered you will have an opportunity to make a showing and we will pass on the question of whether or not you will be allowed to introduce further testimony, later on.

By Mr. Walkup:

I believe this hearing has been granted in pursuance to a request of the Eastern Oil Company and they should, therefore, be allowed the opportunity of introducing the first testimony.

By Mr. Lattimore:

The Eastern Oil Company submits its case to the Department upon the record and are willing to stand on the same. The same for the Southwestern Petroleum Company.

By Mr. Ward:

Funk & Riter are willing to submit their case to the Department.

By Mr. Scales:

The same for Gunsburg & Foreman.

Mr. Tabor:

Eastman Richard is willing to submit his case to the Department without further taking of testimony.

Mr. Bradley:

We do not consent to submit the case without taking testimony.

Mr. Walkup:

I suggest that at the conclusion of the testimony you can make a showing in support of such request for a continuance.

ROY E. SCALES, being first duly sworn on oath by Fred S. Cook, Deputy Clerk United States Court, testified as follows:

By Mr. Bradley:

Q. Where do you live? A. At Tulsa, Oklahoma.

Q. How long have you lived there? A. Since 28th of December.

Q. What business are you in? A. In the oil business.

Q. How long have you been in the oil business? A. Four years.

Q. For yourself? A. No, sir; I am working for the Southwestern Petroleum Company and David Gunsburg, Buffalo, New York.

Q. Do you work on a salary? A. Part of the time and part of the time for myself. At the time this lease was taken I was working on a salary.

Q. What is the salary? A. $150.00 a month and expenses.

Q. How long were you employed on salary? A. Two months, for the Eastern Oil Company.

Q. Are you employed by any one else at this time? A. I am not.

Q. Were you at the time the lease was made to Gunsburg and the Southwestern Petroleum Company? A. I was not.

Q. Did you take more than one lease from this allottee, Eastman? A. I did.

Q. How many? A. I took Eastman's lease for Funk and I took a lease for the Eastern Oil Company on the inherited land of his wife.

Q. With reference to this allottee's land, this 160 acres, did you make a lease on the west and east 80? A. No, sir.

Q. Which 80? A. The west 80.

Q. Was Funk present? A. When I took it? Yes, sir.

Q. Who else? A. Boone & Lattimore.

Q. Were they all present? A. Butte was not in; Lattimore & Boone. My understanding is that Boone wrote up the lease.

Q. Who was present at the time the deal was closed? A. The deal was closed and I gave Mr. Boone my check, and I think the lease was written up here in the Department. I was not present.

Q. How much did you give a check for? A. $80.00.

Q. What for? A. 80 acres. $1.00 per acre.

Q. Who was the check payable to? A. Eastman Richard.

Q. Do you know whether or not he got the money? A. I don't know; I guess it is here on deposit.

Q. Was the money placed with the Department at the time the lease was filed? A. It was.

Q. How do you know it was? A. It was given to Boone.

Q. But it was not paid into the Department until it was filed, was it? A. Now as to the exact date, my understanding was that Mr. Boone came over here to the Department with the allottee, and I gave him my personal check and brought it over; what he did with it, I don't know.

Q. You don't know whether the allottee was paid it or not? A. The money was placed with the Department pending the approval of this lease, as there was another lease of record.

Q. You yourself never paid Eastman anything? A. I never did.

Q. You do not know whether he has been paid anything? A. No, sir. The check was given to Boone to pay into the Department.

Q. Payable to Eastman? A. That was my understanding.

Mr. Bradley addressing Mr. Walkup:

Q. Have you the check in the file? We want the record to show the facts whether or not the check was here.

Mr. Bradley addressing the witness:

Q. Do you know whether or not the two leases, one on the east 80 and one on the west 80 were taken at the same time? A. Taken on the same day.

Q. Do you know whether or not the bonus on the east 80 was paid? A. No, sir.

Q. Nor to whom it was paid? A. No, sir.

Q. Who was present when you handed the check to Mr. Boone? A. Mr. Funk was present. I think Mr. Hosteter was present.

Q. Was that lease taken in the name of Gunsburg? A. The lease was taken in the name of the Southwestern Petroleum Company and David Gunsburg.

Q. How much did you receive for that lease? A. I was working on a salary of $150.00 per month.

Q. You never sold it for $600.00? A. No, sir.

Q. All you got was your salary? A. Salary, that is all. I was working on a salary of $150.00 per month.

Q. Anybody ever pay you anything else for turning that over? A. No, sir; I worked from the 20th of February to the 20th of April.

Q. Are you working for them now? A. I am working for them on a commission.

By Mr. Walkup:

Q. What sort of commission do you work on in connection

with Departmental leases? A. A commission from the leases we make.

Q. Out of the royalty production? A certain amount for each lease you secure? A. Yes, sir.

At 12 M., on motion of the Chairman, the meeting adjourned to 1:30 P. M.

At 1:30 P. M. E. C. MOTTER, being called as a witness, and being first duly sworn on oath by Fred S. Cook, Deputy Clerk of the United States Court, testified as follows:

By Mr. Bradley:

Q. State your name? A. E. C. Motter.

Q. What is your occupation? A. Attorney at law.

Q. Were you present when the oil and gas mining lease was executed by Eastman Richard, and William J. Anicker, on the West half of NE 4 of Section 5, Twp. 17 N., Range 7 East? A. I was.

Q. Who else was present? A. I think Mr. Van Smith, J. B. Furry, Robert A. Zebold and Blanche Ashton.

Q. Was there any conversation there with reference to the lease on that 80? A. There was.

Q. Between who? A. Between Anicker and Eastman Richard, the allottee, and also between myself and Eastman Richard.

Q. What was the conversation? A. My recollection is that I quizzed Eastman about the execution of leases to ascertain his understanding, and I asked him whether he had executed a lease covering this land before, and he replied he had.

Q. To whom? A. He replied to the Eastern Oil Company.

Q. The Eastern Oil Company? A. Yes, sir.

Q. Was there anything further said? A. I asked him if he executed a lease on this particular 80 acres to any one. He stated he had not. To Funk and Riter, he stated he had not.

Q. Who are you acting for? A. Mr. Anicker.

Q. Did you make any investigation in the office of the Indian Agent with reference to whether there was any lease on file covering the west 80? A. I did.

Q. What did you find? A. I found there was a lease on file in this office to the Eastern Oil Company covering that but the lease had not been filed within 30 days within the regulations and I advised Mr. Anicker the Eastern Oil Company lease was not good. Having first talked with Eastman he having stated he did not wish their lease approved. I had prepared for Eastern the declaration which is on file with

the lease; I also filed the lease on the west 80; I found no lease on file on the west 80.

Q. Did you see Eastman Richard at any time subsequent to the time the lease to Anicker was filed in this office? A. I saw him twice or three times.

Q. Where? A. At Eufaula all three times.

Q. Did you talk to him with reference to the lease to Gunsburg and the Southwestern Petroleum Company? A. At two different [times] I talked to him.

Q. When was the first time? A. The first time I talked to him about the Gun*d*sburg-Foreman and Southwestern Petroleum Company lease was sometime the 12th of April. I took and prepared an affidavit and took it to Eufaula to have him execute.

Q. What did you base your statements on in the affidavit? A. I prepared the affidavit from my recollection of statements made to me.

Q. Was that the affidavit, which I hand you? (Hands the witness an affidavit) "Exhibit A". A. It is.

Q. Where was that signed and by whom? A. That was signed in the office, abstract office of John C. Slate.

Q. Was that gone over with Eastman or read to him before he signed it? A. I first talked to him about the statement he made in my office to Mr. Anicker and myself, then I read the affidavit to him, and the full-blood Indian present was, I believe, Robert Fish, was his name.

Q. Robert Fish? A. Yes, sir. Eastman speaks English very well, and I am positive that Robert read that affidavit; he took and explained it to him, and Eastman said that the statements made there in were true and signed the affidavit.

Q. Did you read the affidavit to him? A. Yes, sir.

Q. Did you explain it to him? A. Yes, sir.

Q. Who was present? A. Van Smith and Robert Fish; I think there was another gentleman among them, Mr. Smock, I don't remember whether he heard him read all of it.

Q. Was that Mr. Van Smith, the gentleman who is present here as a witness? A. That is.

By Mr. Tabor:

Q. You stated when Eastman made the lease to Mr. Anicker you were present in his office. A. Present in my office.

Q. You said that Eastman Richard told you he had made a lease on that land before that day? A. Made a lease to the Eastern Oil Company, which he did not wish approved. He was going to file a protest against the approval of this lease, and asked for the approval of the Anicker lease.

Q. Didn't he tell you he had made a lease on March 20th? A. He did not. He stated he never made any lease, only to

the Eastern Oil Company on 160 acres and Funk & Riter on the east 80.

Q. You said he told you he had not made a lease outside of the Eastern Oil Company? A. He did.

Q. Who solicited the execution of these leases to Mr. Anicker? A. I could not say.

Q. You represent Mr. Anicker? A. Mr. Anicker asked me to prepare these leases and possibly I prepared them myself, they were prepared in my office.

Q. You don't know of your own personal knowledge whether Mr. Anicker sent for Eastman Richard for the purpose of making this lease? A. No I don't.

Q. Regarding the affidavit you spoke of that was signed in Eufaula, you state positively you read that affidavit to Eastban Richard. A. I did. I explained them first before reading the affidavit and I called his attention to it.

Q. Is it not a fact you told Eastman Richard at the time that he was to sign that paper that he would get $400.00 the next day? A. I did not.

By Mr. Bradley:

Q. Did Mr. Anicker pay Eastman Richard anything in your presence? A. Paid him $50.00.

By Mr. Tabor:

Q. When Eastman Richard was in your office at the time the lease was first executed to Mr. Anicker, I understand that Mr. Anicker or you come over to the Agency to investigate the records? A. I did.

Q. When you came back you told Eastman he could make a lease without involving himself in any difficulty? A. Didn't tell Eastman anything of the kind. Told Mr. Anicker if he did not wish the Eastern Oil Company lease approved by signing a waiver, which he had agreed to sign that necessarily would void the lease on the other 80 if Mr. Anicker would take a lease on the west 80.

Q. Was not Eastman Richard informed at that time that he could execute a lease on that 80 that would not involve him whatever. A. No I don't recollect that. The fact of the matter is I did not advise Eastman in any way.

Q. You represented Mr. Anicker in the matter and you told him what your best judgment was? A. Yes, sir.

By Mr. Lattimore:

Q. That affidavit was signed at Eufaula on the 12th of April? A. Yes, sir.

By Mr. Tabor:

Q. As a matter of fact at the time you advised Mr. An-

icker to take the lease on this west 80 why did you do that? A. Why did I advise Mr. Anicker?

Q. Yes, sir. A. I advised Mr. Anicker the lease on the west 80 in my judgment was a valuable lease, and would be approved by the Department for the reason that Eastman had filed a protest against the Eastern Oil Company lease and he said he had made no lease on the west 80.

Q. You found out afterwards there had been a lease made? A. I found out later, the first notice I had of the Gunsburg & Foreman people I found in the Legal Record published here, in which they had a lease filed in the agency. After I saw that I came over here then and examined the papers. That was the first I got. Before advising Mr. Anicker I had him call up the Register of Deed at Sapulpa to ascertain whether there was any lease on record.

Q. You are aware they do not usually record Department Leases before they are approved?

Q. What did you then advise him to do? A. After that I advised him to file with the Register of Deeds.

Q. You are aware the Department gives 30 days to file leases? A. I am aware of the Regulations of the Department which provide that leases may be filed in 30 days.

Q. That is all full-blood leases? A. All Department leases.

By Mr. Bradley:

Q. Did you subsequently to the execution of that affidavit, did you talk to Eastman Richard? A. Yes I talked to him about 10 days or two weeks afterward.

Q. He made any statement contrary to that affidavit? A. No, sir, I was in Eufaula on another matter and I met him on the street and talked to him about these leases, and again asked him, are you positive you did not execute a lease to Gunsburg & Foreman on the west 80 acres, and he said, "yes I am." There will be a hearing on the 13th, and will expect you to be present. He stated, "I will."

Q. As a matter of fact, was there a lease executed? A. I understand that Eastman signed a lease.

By Mr. Lattimore:

Q. Did you examine the lease to David Gunsburg and the Southwestern Petroleum Company on file with the Department before you prepared that affidavit that was signed on the 12th of April? A. I am not positive as to that, whether I examined it before or afterward. I came over here after noticing in the Legal Record, and whether I examined the lease before I prepared the affidavit or afterward I could not say positive as to that.

Q. Did you make one or two examinations? A. That is

just what I am trying to explain, I don't know. I have seen the papers five or six different times I believe in the past three or four weeks.

By Mr. Tabor:

Q. Before you had Eastman Richard sign that affidavit on April 12th which you had already prepared you did know it to be a fact that the record here shows he had made a lease on both 80 acres prior to that? A. Yes, sir, one of the things, there is no question in my judgment about the name on the Gun*d*sburg & Foreman lease. I said to him I would like for you to explain it and he said, he got me to sign the lease to Gun*d*sburg & Foreman, but I didn't know it.

Q. In face of the fact the record shows that there was an affidavit made, you prepared this affidavit with a view of having this allottee sign this affidavit. A. Not at all. I am satisfied from the conversation with Eastman he didn't believe he had signed that lease. I was satisfied as to his signature to the lease.

By Mr. Bradley:

Q. You stated some time ago Eastman Richard spoke English fluently? A. He does.

Q. As a matter of fact the lease was taken before Mr. Kremer? A. Yes, sir. That does not look like he was flimflamed in any way. I am perfectly willing to give the gentleman my explanation after making the investigation and talking with Mr. Kremer and looking into it. It does not look like an easy matter for Eastman to have executed and signed ten leases and have the notary to have passed the leases. I have taken no acknowledgments to instruments in the Department, never been a notary public nor have I occupied any official position that would permit me to take acknowledgments.

By Mr. Tabor:

Q. You were paid by Mr. Anicker to secure these various declarations and affidavits from Eastman Richard? A. I suppose I will be paid. I make charges for my services I haven't rendered a bill yet.

H. VAN SMITH, called as a witness, being first duly sworn on oath by Fred S. Cook, Deputy Clerk of the United States Court, testified as follows :

By Mr. Bradley:

Q. What is your name? A. H. Van Smith.

Q. You live in Muskogee? A. Yes, sir.

Q. Is that your signature appearing on the affidavit that has been offered in evidence here, as having been executed at Eufaula by Eastman Richard? A. Yes, sir.

Q. Were you present when Eastman Richard signed it? A. Yes, sir.

Q. Were you present before he signed it? A. Yes, sir.

Q. Do you know whether it was read to him and explained to him? A. Yes, sir, Mr. Motter he read the affidavit over to him, and then Eastman talked in Creek, I suppose to Robert Fish, and then Robert took the affidavit and he explained it in Creek, I suppose to Eastman, and Eastman said he understood it and signed it.

By Mr. Lattimore:

Q. After the affidavit was read over to him in English? A. Yes, sir, in English first. Then Robert Fish took it and talked in Creek for quite a long time and Eastman said in English he understood it and signed; then Mr. Motter asked him if he was satisfied thoroughly and he said he did and it was acknowledged before a notary.

Q. Who secured Fish's presence? A. Robert came in with Eastman.

Q. Did Robert Fish bring Eastman in there? A. I don't know about that. I went down to Eufaula to bid on some leases for sale and Mr. Motter said he wanted to see Eastman Robert and I was in ..... office when these people came in.

Q. Did you see Robert Fish paid any money for his services? A. I paid Robert Fish myself, I paid him for Mr. Anicker.

By Mr. Tabor:

Q. Do you know if Robert Fish read that affidavit and thoroughly explained it to Eastman? A. I could not tell as to that, he was talking in Creek.

Q. And was Robert Fish in your employment? A. No, sir, Mr. Anicker's.

Q. Robert had been working for Mr. Anicker and if Robert wanted any money you gave it to him, and he refunded it to you? A. Yes, sir.

Q. Then he was working for Mr. Anicker? A. That is asking for a conclusion.

By Mr. Lattimore:

Q. How much money did he pay Robert Fish? A. I paid him $20.00. I gave him a check on the First National Bank of Muskogee.

By Mr. Bradley:

We have another witness and I would like to have it go over for ten days.

By Mr. Lattimore:

We object to a continuance so far as the Eastern Oil Company is concerned for any length of time whatever. I understand the facts to be there is a well drilling from a quarter or half mile from this land, which is due in within ten days and the well may be condemned or prove very productive within that time and it is to the advantage of the Indian as well as everybody else that this matter be pushed through.

By Mr. Tabor:

We wish to enter the same statement for the allottee.

By Mr. Ward:

I want to say in behalf of Funk & Riter this continuance does not effect our case; we agreed to submit our case on the records and if a continuance be requested that feature of the case in which we are interested we desire be taken up and considered regardless of what is done in the Gunsburg and Southwestern Petroleum Company lease, and I see no reason for delaying that feature of the case.

By Mr. Scales:

I want to say we would not want any continuance, it is a matter of protection to both parties, this well is drilling and will be in in a few days, it will be a producer or dry; if it comes in dry no body wants it, and if it comes in good, every body wants it.

By Mr. Tabor:

We want to say on the part of the allottee that notice was given to all parties in connection with this land and it seems to me that all witnesses should have been here to sustain their claims, if they have any. Upon the statements just made it is no doubt to the best benefit of the allottee that the matter be adjudicated as soon as possible. We do not feel that a continuance ought to be granted.

By Mr. Motter:

On behalf of Mr. Anicker we have made due and deligent effort to get our witnesses here; there is no means of compelling them to attend. We would be very glad to have them at this hearing today, and he will make an attempt at this time to get a continuance until he could secure their attendance.

By Mr. Walkup:

Q. How soon can you get your witnesses? A. If we could have the services of the District Agent to take the testimony, we might get two of them at Eufaula and the other one at Tulsa, we might get them. The witnesses are very important witnesses to Mr. Anicker's case.

By Mr. Tabor:

If you could make a general statement of what you intend to prove.

By Mr. Motter:

We certainly don't care to make a general statement. If the Indian Superintendent says that it is necessary for us to make a statement of what we expect to prove in order to secure a continuance, we will file an affidavit of the facts which we expect to prove or make a statement at this time.

By Mr. Walkup:

You cannot say at this time how short a time you can agree to either bring in the witnesses or waive the introduction of any further evidence.

Mr. Motter:

A. While I believe we can do it by next Monday, it might be possible to get our witnesses from Eufaula tomorrow or the next day, I doubt whether we can get the witness from Tulsa before Saturday.

Mr. Bradley:

They were all requested to attend today.

Mr. Tabor:

We would like to have your ruling before submitting rebuttal testimony.

Mr. Walkup.

The case is continued until Saturday with the understanding that if you do not produce your witnesses by that time you waive the introduction of any further evidence and with the further understanding that you file an affidavit showing what you expect to prove. Should an examination of the affidavit incline us to the belief that that continuance is unnecessary, then all parties will be notified and the case probably be disposed of without that hearing. As the case now stands, it is continued to next Saturday at the same time 10:30 a. m., by the consent of all parties concerned. (L W J)

*Department of the Interior, United States Indian Superintendent, Union Agency, Muskogee, Oklahoma. In the matter of a hearing on conflicting leases executed by Eastman Richards.*

At a hearing held in the office of the United States Indian Superintendent, Muskogee, Oklahoma, May 14, 1912, before F. H. Walkup, representing the Union Agency, there was present the following:

Eastern Oil Company, represented by Butte, Boone and Lattimore, by Mr. Lattimore, with prior consent of Gunsburg and Southwestern Petroleum Company.

A. L. Funk & O. E. Riter,— A. L. Funk.

David Gunsburg, Foreman by Roy E. Scales, Agent.

Wm. J. Anicker, by Roach & Bradley, Attorneys, by Mr. Bradley.

Eastman Richard, by Lucas & Tabor, Attorneys, by Mr. Tabor.

D. C. Morrison, Oil Inspector, Union Agency.

Mr. Tabor:

The interested parties all hereby agree that the affidavit filed by W. J. Anicker as to the statements that might be made by the witnesses mentioned therein will be testified by those witnesses the same as if they were present at this hearing.

Mr. Walkup:

The affidavit will be marked "Exhibit C."

The following witnesses were duly sworn by R. S. Cate, deputy clerk of the United States Court.

Wm. Kremer, Roy E. Scales, Eastman Richard, Paul Land,—Interpreter.

Mr. Walkup:

Have the records show that this hearing is held by agreement between all parties concerned in lieu of the hearing set for Saturday of this week. Eastman Richard, called as a witness, being first duly sworn on oath by R. S. Cate, deputy clerk of the United States Court, testified as follows:

By Mr. Tabor: (Interpreted by Paul Land.)

Q. Your name is Eastman Richard? A. Yes, sir.

Q. Are you the allottee in controversy in this case? A. Yes, sir.

Q. Do you recollect making a lease to one Arthur Rayburn on this land? A. Yes, sir.

Q. Just tell what facts transpired at that time? A. Arthur Rayburn went to see me and I went to Eufaula and there signed some papers purporting to be an oil and gas lease and later I was informed that the Secretary of the Interior had not approved of it and was asked to sign some other papers, but I didn't go at that time, and we met later and we talked about the business at that time, but not to any length. After I found or was told by Arthur the Secretary of the Interior had not approved of the lease, there was two fellows came to me, those are the fellows standing behind me (witness points to A. L. Funk and Roy E. Scales) and Sam Polk, Eastman's father. These people wanted to see something about the land and I informed them that since the Secretary of the Interior had disapproved of the lease that I really didn't know as to the regulations governing such, and they came on to Muskogee to sign up some papers for the oil and gas lease. We prepared the papers and went back home. And after that we had prepared the papers about a week or some time later after we had left here, Robert Fish came to me and wanted some papers signed up.

By Mr. Scales:

Q. Who for? A. Some one by the name of Anicker, wanted to lease the land for oil and gas. I told Robert that I had already leased the land and signed the papers, and he insisted that we go and informed me I would not be out a cent. He said, I will pay your board and lodging and we came on over at that time and went to the court house. We found he was not there but his stenographer or clerk was in; he came in later. He said, you are here are you. I said, yes. And he talked to me about the land; we talked over the matter and I told him I had already made a lease, Robert Fish was by the side of me and we didn't do very much that day but the next morning before we prepared the papers, I informed him I had already leased the land to one Roy Scales, there was two fellows but I forgot their names (witness points to Mr. Funk as being one of the men). They went ahead and prepared the papers and I was going to be appointed guardian over some children and this party wanted the land belonging to these minor children, wanted the children's land, I was not yet appointed guardian, and I told them there might be some possibility of making some arrangements about my land, and I went on and told him I had signed some papers and I went on and told them I didn't care about leasing, or I simply told him to let the matter of leasing my land lay low, just wait until later. I said I would look into the situation and Robert Fish and I went in

there and the man went out and came back later, and he said it was all right, but I didn't know just what he wanted.

By Mr. Tabor:

Q. Who was that? A. Mr. Anicker. And he fixed up the papers but I didn't know just how he prepared them or whether Robert Fish and I were in his office. They took me into a side room, side room in an adjoining office and Robert Fish was in the office I went in the other room and signed the papers, but as to how he looked into the situation I don't know, and he said, I have got everything ready now and want you to sign the papers.

Mr. Tabor:

Q. Who was that? A. Mr. Anicker. The fellow told me to practice up writing my signature.

Mr. Tabor:

Q. Which fellow? A. Mr. Motter. There was so many papers for signature that my hand isn't rested since that time. After that of signing the papers they were going some other place, and we went to an attorney's office, and after we went to an attorney's office they went some other direction. We went to the Commissioner's office and the Commissioner asked how the gentlemen got the lease, but this gentleman told the Commissioner they left the papers with the lease in the office and the Commissioner asked them if they paid any bonus, and he replied, no, sir. The Commissioner told him he should pay or myself. We went back to the attorney's office, and he paid me $50.00, and promised to pay me $400.00 and we were aiming to go back on the next train, but Robert said he had not got his pay and had to stay over, I told him I would go on. I didn't like to go by myself, and Robert Fish said it was because of him being held up, I told him I would go on and wait for him. I waited until train time and as soon as the train arrived I got on and went on. Robert Fish got there just as the train was pulling out and got on and we went home, then that man sent me a telegram.

Mr. Scales:

Q. A telephone message was it not? A. A telegram. That fellow telephoned for me to come.

Mr. Tabor:

Q. Which fellow? A. Mr. Anicker. Robert Fish was to accompany me. Pearce is the name of the post-office and my daughter happened to be there at the time the telegram arrived, and the gentleman who received the telegram wrote it on a piece of paper and gave it to my daughter, and my daugh-

ter brought it home. I read at it but I could not quite understand it, but I had an idea of what it meant. Robert Fish was there at the time. He was at his father-in-law's and it was raining on that day. I went to Pierce to see the telegram and I met Robert on the way; Robert told me that Mr. Anicker had sent for Robert and suggested that we two go, but it was raining and I didn't care to come; he didn't seem to like it very well and he came on and I went on to the store, and I telephoned to Mr. Anicker I would be there by twelve o'clock, but I got a letter from this gentleman here (pointing to Mr. Tabor) to be in Eufaula. The telephone message to Mr. Anicker stated I would be there at noon tomorrow, but I received a letter from this gentleman (Mr. Tabor) to be in Eufaula at that time, and I couldn't come here and go back there at the same time. Robert, who is my cousin, he does not know we are related, and is working for that gentleman (Mr. Anicker), Robert was here and I wanted him to get Robert for me to talk to; Robert came to the telephone and we talked, I told him I would be up there and he said he would wait for me on any train, but I didn't come, I went to Eufaula, the next morning I met him on the road as he was returning from Muskogee and we talked, and I told him that the reason I didn't come was I had to go to Eufaula. I noticed there was something he didn't like and I went on to Eufaula, I spent the day in Eufaula. There were two gentlemen, this is one (witness points to Mr. Motter), they were in Eufaula, but I didn't talk, it was evening before me talked to each other. This fellow (Mr. Motter) we talked to each other and he told me to sign some papers and get my money and I met Robert Fish and asked him to come and go with me and we went to some office and there was another man that I didn't know and I made a note and I thought because I signed those papers I was to get my money. This man (Mr. Motter) gave me the papers and I didn't know what the papers were for and I didn't know where to sign, and he pointed out the line on which to sign and I put my name on it, and Robert was to the back of me, but he didn't say a word; just he and I, that is all.

Mr. Tabor:

Q. Now Eastman when Mr. Anicker sent for you on March 20th to sign some papers you went to Muskogee? A. Yes, sir.

Q. Did you tell Mr. Anicker you had made a lease on this 160 acres of land to the Eastern Oil Company prior to that time? A. I made a lease to some one else.

Q. Did you tell him you made a lease to some one else? A. Yes, sir.

Q Did you tell Mr. Anicker, or this person, in his office

you had made a lease to that 160 acres of land also to Funk & Riter? A. There was two tracts of land of 80 acres each, and I had leased the whole 160 acres to this gentleman, Mr. Scales, Mr. Anicker said he would like to look into the matter.

Q. Mr. Anicker went over to the agency or somewhere to look into the record, did he? A. Probably so.

Q. Did you tell Mr. Anicker you had not made a lease on 80 acres of that land? A. No, sir.

Q. Did you tell Mr. Anicker you wanted to make a lease on 80 acres you had not leased? A. I told him I had it all leased.

Q. Did you tell Mr. Anicker you didn't think you could lease that because you had leased before? A. I told him I had leased, and he said he would look into it.

Q. You mean Mr. Anicker said he would look into it? A. Yes, sir.

Q. Did he leave the office and come back later? A. Yes, sir.

Q. Did he tell you he wanted a lease on your land any way? A. He said he could lease it again.

Q. Did Mr. Anicker tell you you could lease that land to him and you would not involve yourself in any difficulty? A. He didn't say.

Q. You had told Mr. Anicker you had already leased the land? A. Yes, sir.

Q. Did Mr. Anicker pay you $50.00? A. Yes, sir.

Q. Did he agree to pay you $400.00? A. Yes, sir.

Q. Did he offer you the other $350.00? A. No, sir.

Q. Was Mr. Motter present in that office at the time? A. There was a number of people in there, and I don't quite remember.

Q. Did Mr. Motter see you in Eufaula about April 12th? The day you sold your children's land? A. There was two of them present Mr. Motter and some one else.

Q. Did Mr. Motter have this paper at that time, this one Marked Exhibit "A"? A. Yes, sir, that is the paper.

Q. Did you read this paper? A. (Witness takes paper in his hand.) He told me to put my name there.

Q. Who told you? A. Mr. Motter.

Q. Did Mr. Motter read that to you thoroughly? A. No, sir.

Q. Did Robert Fish read this to you? A. No, sir.

Q. Did Robert explain the contents to you? A. No, sir.

Q. You signed this did you? A. Yes, sir.

Q. How did you happen to sign this? A. If I signed that paper I could get my money.

Q. You would get $350.00? A. Yes, sir.

Q. That is the reason then you signed it? A. Yes, sir.

Q. You said you didn't know what the contents of this paper were when you signed it? A. It was not explained to me.

Q. Eastman when you gave that lease on those two 80 acres, before you gave the lease to Mr. Anicker, did you come up to the Indian Agent's office. When you made those leases to Scales on those two 80-acre parts? A. Probably so, I don't know. Wouldn't know the Indian Agent if I was to see him.

Q. Did you understand you were making two leases on each 80 acres? A. I thought I was making 160 acres one lease.

Q. You thought you was giving 80 acres to Funk and 80 acres to Scales? A. Probably so, don't know; understood I was making just one lease.

Q. When you gave your name to Anicker, you advised him you had leased 160 acres to Scales? A. I told him that that land was already leased. Robert Fish heard me.

By Mr. Scales:

Q. I would like to ask if he didn't sign the lease in the presence of this man during that day, that this was Dana H. Kelsey's private secretary (pointing to Mr. Kremer)? A. Don't know, we came in to see Mr. Kelsey and talked to him about my wife's land; he gave me some advise in regard to my wife's land.

By Mr. Bradley:

Q. You are a full-blood Indian are you not? A. Yes, sir.

Q. You speak and understand the English language? A. A little bit, don't understand it all. Don't speak it fluently.

Q. In all these conversations with Mr. Anicker and Mr. Motter, you spoke in the English language, and they spoke in the English language didn't they? A. Probably so, they prepared the papers. I could speak the language all right but the papers were not prepared while we were talking.

Q. In November, 1911, you made a lease covering the whole 160 acres to the Eastern Oil Company, is that right? A. Yes, sir.

Q. Then you understood that that lease had lapsed or that the Secretary had not approved it, is that right? A. John Thomas informed me.

Q. Who is John Thomas? A. He brought the letter.

Q. Who was the letter from? A. Arthur Raburn, that is the name of the gentleman.

Q. When did you get that letter, about when? A. Don't know when.

Q. How long after you got that letter did you talk to

any body about leasing your land for oil? A. Didn't talk to any body after I got that letter about a lease, I received another letter.

Q. Who from? A. The same person.

Q. Where did the letter come from? A. Eufaula.

Q. Who was the first person you talked to after getting these letters about leasing the land for oil? A. Mr. Anicker and Mr. Scales.

Q. The two gentlemen you mean, Scales and Funk and your father? A. Yes, sir.

Q. When was that you talked to them? A. They came to my home.

Q. Came to your home in the country near Eufaula? A. West of Checotah where I live.

Q. Did you come away with them? A. I came with them the next morning.

Q. Did they stay there that night? A. They stayed with the neighbors and my father stayed with me.

Q. Mr. Scales speaks the same language you do and understands it? A. Yes, sir.

Q. And you came to Eufaula the next morning after they were at your house? In Checotah. A. Yes, sir.

Q. Where did you go from Checotah? A. To Muskogee.

Q. Where did you go after coming to Muskogee? A. Don't know, might have been up here.

By Mr. Scales:

Q. Did you make a lease that day you arrived in Muskogee, did you make an oil and gas lease? A. Yes, sir, I signed some papers the day I arrived.

Q. Where did you sign those papers? A. Don't know, which is the room, either this one or the other.

Mr. Bradley:

Q. Were you given to understand you were making more than one lease? A. Wants to know why you say one or more leases.

Q. Did you understand you were making a lease to any body but Scales? A. Roy Scales spoke in Creek and I understood that I was making a lease to him.

Q. To Roy Scales? A. Yes, sir.

Q. You didn't understand you were making a lease to anybody but Roy Scales? A. Well, I said there were two persons and I thought that they got the lease.

Q. Was anything said to you about leasing the east 80 acres of the land to Funk? A. There was some talk of it. And there was some mention of the numbers of the land, but I don't know anything about the numbers.

Q. Didn't you understand when you signed those papers you had only leased the east 80? A. I thought I was leasing all of it.

Q. Did you ever make a statement to Mr. Anicker that you had leased the east 80 but there was no lease on the west 80, other than the Eastern Oil Company lease? A. Thought that there was a lease but don't know whether there was any body after that tract of land I could possibly lease to, but since I had investigated and came up here thought probably I knew what I was doing.

Q. Did he state to Mr. Anicker that there was any lease on any of the land other than the east 80 besides the Eastern Oil Company? A. That is probably so because I had leased to two other fellows, Mr. Scales and Funk, but I didn't know the names.

Q. Did you tell Mr. Anicker that there was any other lease on the west 80 than the Eastern Oil Company lease, did you tell him that? A. I told them I had leased to these two fellows Funk and Scales.

Q. Did you mention Mr. Scales' name to Mr. Anicker at all? A. Told them I had leased to Scales. Didn't know the other fellow, but I did know Scales.

Q. Did you tell them you had leased the whole 160 acres to Scales? A. I just told them I had leased the land.

Q. Did you mention Scales' name? A. Yes, sir, I names over Scales. I don't know any one but Roy Scales.

Q. Did you tell him when you had leased the land to Scales? A. I don't know the day of the month.

Q. Did he inquire when you had leased to Roy Scales? A. No, sir, I investigated; said the 21st of March. I had made a lease on the 26th day of March.

Q. Did you tell him when? A. No, sir. I went and looked up the records.

Q. When you took Mr. Anicker's $50.00 you knew all that land was leased? A. Yes, sir, both knew because I had told them.

Q. Did he ask you any other question about leasing to Scales? A. He asked me questions about it.

Q. What were they? A. But since there was three tracts of land he spoke about I hardly can make a distinction just which he referred to. He prepared the papers for the other land and my land.

Q. Were the lease made to Scales read over to you? A. Yes, sir.

Q. Scales knew the contents in the leases signed? A. I didn't look.

Q. Do you know whether or not, or did you ever hear that Scales got any money for this lease from other people?

Mr. Tabor:

That is immaterial.

Mr. Scales:

That is immaterial if I had sold them for $100.00, what about that? I object because it is hear-say testimony? I object to any question like that.

Mr. Bradley:

Q. Didn't Charles Gibson say that he got $600.00 from Gunsburg and Southwestern Petroleum Company? A. No, sir, never talked to him at all.

Q. Now when you told Mr. Anicker that all this land was leased, you were simply telling him about the Eastern Oil Company lease, is not that true? A. I had in mind the lease I made to Scales, that I had leased all to him, and that is the lease I had in mind when I told him.

Q. Who was present when you signed the Anicker lease, if you know?

Mr. Motter:

Q. How many people were present? A. About three, if I am not mistaken, four with me.

Mr. Bradley:

Q. When you signed the affidavit at Eufaula did Mr. Motter read it to you, all of it? A. He might have read it, but he just gave me a paper, it is here somewhere. He might have read it. He never read it. He simply said sign this paper and go and get your money.

Q. You have any conversation with Robert Fish about the affidavit before you signed it? A. No, sir.

Q. Never talked to him at all? A. Robert Fish was in the office with me.

Q. They told you if you would sign, that, you would get the balance of the money, $350.00 is that right? A. Yes, sir.

Q. Did you go and get your money? A. No, sir.

Q. Did you ask for it? A. I didn't get any money for this reason, I received word there was some one came to my place and offered me as high as $1600.00 for the lease.

Q. Who was it offered you $1600.00 for the lease? A. Ben Field and John Lee Hogan, three of them, but I don't remember the other name. I telephoned to Mr. Anicker to find out about the lease and some party by the name of Grayson said that Mr. Anicker didn't have any more use for me, because he had gotten all he wanted, and I said if that was all he wanted I didn't care much about taking that money, I got that money but I will be glad to refund it, that is why I didn't get the balance.

Q. Is that the reason you are against Anicker? A. No, sir, I won't hold that against him.

Q. He never said that about you, did he? A. I just got that from hear-say. He has not anything against him, that is just hear-say.

Q. Would you know the description of 160 acres of land, if you heard it by survey numbers? A. No, sir.

Q. How did you know you were leasing to Scales? A. I just heard at the time of the allotments that each Indian was to get 160 acres apiece and I had an idea that I got the same share that the others did, which was 160 acres.

Q. Did Scales ever make a proposition to you to lease from you 80 acres only? A. He simply said I want to lease your land.

Q. That is all.

By Mr. Tabor:

Q. When you were in Mr. Anicker's office making this lease, you spoke to them about your children's land, did you? A. My cousin was working for Anicker.

Q. Did you speak to Anicker about your children's land? A. Yes, sir.

Q. And you told Anicker you had not leased your children's land? A. Yes, sir.

By Mr. Bradley:

Q Eastman you signed the declaration that has been filed here in the Indian Agent's office 18750 saying you had made this lease to Anicker in good faith in both, is that correct? (The interpreter here reads to the witness the affidavit marked Exhibit "B".) A. I signed a number of papers and I signed this one.

Q. Was it read over and explained to you? A. It was read but not made quite clear.

Q. Is it clear now? Do you still stick to it? A. Yes, I understand it. Before I say whether I stick to it or not, I want the question of the oil and gas lease that I signed, settled.

Q. Is the same true with reference to this one, to the affidavit signed at Eufaula? A. I don't know what this is. (Interpreter here reads over to the witness, the affidavit marked Exhibit "A.")

Mr. Scales, addressing the Interpreter:

Q. Did you read it over to him? A. Yes, sir.

Mr. Bradley:

Q. Did he make any statement; ask him if he understands it? A. Yes, sir.

The Witness:

A. What I said in regard to the other, applies to this.

Mr. Bradley:

Q. Did you understand any better the lease you made to Scales than you made to Anicker? A. I understood the Scales lease, because Scales spoke in Creek.

Q. Did he read it? A. Read the lease?

Q. Yes, sir. A. Yes, sir.

Q. Was Scales name in the lease? A. Didn't look.

Q. Did Scales tell him he was mentioned in the lease? A. Didn't say.

Mr. Morrison:

Q. Eastman you stated you were offered $1600.00 as bonus on this lease, that was after the leases were made, was it not? A. Yes, sir, after the leases had been made.

Mr. Walkup:

Q. How long after the last lease was made? A. Not long after.

Q. About how long, a week? A. About a week.

Q. Who offered that? A. I don't know, John D. Hogan.

Q. Was that offer for the whole 160 acres or half of it? A. I don't know, just told him I could not lease.

Q. You don't know whether he means the whole allotment or half of it? A. Don't know.

Mr. Scales:

Q. I wish you would have him answer this question. When I met Eastman in Eufaula what did I say to Eastman in regard to any bonus that might be asked for the lease by the Department?

Mr. Scales (later):

I with-draw that question.

Mr. Tabor:

Q. This paper here, that was signed by you in Mr. Anicker's office, was that drawn by Mr. Anicker in his office? You didn't draw that up yourself? A. I didn't ask him to draw up any papers.

Q. In signing this declaration, did you do so realizing and understanding every statement made by Mr. Anicker that you could sign this statement and make that lease to Mr. Anicker and not involve yourself in any difficulty regarding these leases. What I mean is, you could do so without getting your leases tied up? A. He didn't speak about any difficulties arising.

Q. What I mean is did Mr. Anicker make such a statement to you, you could make a lease and sign this statement? Did Mr. Anicker tell you, you could sign this, and you would not be involved in any trouble? A. He didn't say.

Q. Did Mr. Anicker tell you, you could sign without making any trouble? A. Yes, sir.

Q. You relied upon Mr. Anicker's statement? A. Yes, sir, I was afraid some difficulty might arise.

Mr. Scales:

I would like to make a statement in regard to the statement that they said Mr. Kemp and Charles Gibson said, I wish to say this, that as I said yesterday, this is an informal statement, that at the time this lease was taken that I was employed by Gunsburg & Foreman on a salary and that I did not at any time make any statement to Charles Gibson or any person that I had sold this lease, did not sell the lease although Charles Gibson might testify I told him that, but the statement will not be true. The lease was not sold to any body, it was taken direct to the company, no misrepresentations had been made at the time the lease was taken, the leases were prepared in Boone & Lattimore's office and was brought over here by Mr. Lattimore or Mr. Boone (Mr. Boone came over), I gave my personal check for the bonus, the check has been cashed so Mr. Kremer states and the lease for Gunsburg & Foreman on the west 80 was taken in good faith. The matter was not misrepresented to anybody, neither was the lease peddled to any body, regardless of the fact that Charles Gibson stated I had slipped one over on Eastman Richards. These statements I make regarding being employed by Gunsburg and Foreman, I will have verified to you if you so desire it, but if you want that verified, that can be done. As I said yesterday, we are willing to stand on the record; of course, these are hear-say statements and of course you hear different things regarding these leases. This lease was taken, as I thought, in compliance with the rules and regulations of the Department, and all I have to say that the statement regarding receiving money is false.

Mr. Tabor addressing Mr. Scales:

Q. Did you at any time tell Eastman Richards you were taking the land for yourself? A. No, I don't know that I did.

Q. I will ask you this, did you tell him you were taking the lease for Gunsburg & Southwestern Petroleum Company? A. I don't know that, I told him I was working for the company.

Mr. Scales:

Mr. Hochstetter was here in town that day the lease was

taken, March 20th, I took Mr. Hockstetter in Butte, Boone & Lattimore's office and I introduced him to Eastman and his family and said to him that Mr. Hochstetter was one of the company to whom this lease was to be taken. Mr. Lattimore will verify that.

Mr. Tabor:

Q. Did you meet Mr. Hochstetter by arrangement? A. No, sir.

WM. KREMER, called as a witness, and being first duly sworn by R. S. Cate, Deputy Clerk of the United States Court, testified as follows:

Mr. Tabor:

Q. State your name? A. William Kremer.

Q. Are you a notary public? A. Yes, sir.

Q. What position, if any, do you hold with the Department? A. Clerk, Indian Agency.

Q. How long have you been here? A. Nearly six years.

Q. Are you acquainted with Mr. Scales, Mr. Funk and Eastman Richards? A. Yes, sir.

Q. Were they in your office on or about March 20th? A. They were.

Q. Regarding some oil leases? A. Yes, sir.

Q. Just state what transpired at that time? A. Mr. Funk and Mr. Scales with Eastman Richard came in, had a lease prepared covering 160 acres of Eastman Richard's land, I went over them carefully and explained them to Eastman Richards, they paid in the bonus money, the leases were acknowledged and submitted.

Q. Do you recollect if these leases on which you took Eastman's affidavit were lease on 160 acres of land or 80 acres each? A. Two leases, 80 acres each.

Q. You explained to Eastman what those instruments were? A. I went over them carefully.

Q. Did he appear to understand? A. Said he did.

That is all.

Mr. Bradley:

Q. You had not known him prior to that time? A. I had seen him several times.

Q. To know his name? A. No I won't say, to know his name.

Q. Did you read the leases to him through? A. Not word for word.

Q. Did he understand them? A. I explained to him what the leases were, the bonus consideration, and the terms of

the leases generally, that is, what the royalties would amount to per annum.

Q. Was anything said about a lease to Scales? A. No.

Q. Did you inquire if Scales was interested? A. I did not.

Q. Did you inquire, who, if any body was representing the lessees Gunsburg & Southwestern Petroleum Company? A. Did not ask any body.

Q. Did you know of your own knowledge who was represented? A. No I can't say I did, I supposed that Funk and Scales.

Q. You know Mr. Funk? A. Yes, sir, known him for several years.

Q. This was in two separate leases? A. It was.

Q. Two entirely separate leases? A. Yes, sir.

Q. Each covering 80 acres? A. Yes, sir.

Q. Both of those leases filed at that time? A. Well, I don't know until I look up the records, if they were filed that day.

Q. That is all you had to do? A. Yes, sir.

Q. Was the bonus money paid into your hands? A. Paid into the hands of the cashier.

Motter:

This record does not show that the questions answers and explanations passing between Kramer and Eastman Richard were all in the English language. This is important.

Bradley.

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*Affidavit for Continuance*—In the matter of the approval of Oil and Gas lease from Eastman Richards to William J. Anicker, covering the west half of the northeast quarter of section five, township 17 north, range 7 east.

Office of Indian Affairs Received Jul 22 1912 File 73380

*State of Oklahoma, Muskogee County*—ss. P&R

*In the Matter of the Approval of Oil and Gas Lease From Eastman Richard to William J. Anicker, Covering the West Half of the Northeast Quarter of Section Five, Township 14 North, Range 7 East.*

AFFIDAVIT FOR CONTINUANCE.

William J. Anicker, being first duly sworn, on oath states that he is the lessee from the allottee Eastman Richard for oil and gas mining purposes of the tract of land described as the west half of the northeast quarter of section 5, township

17 north, range 7 east; That he is unable to proceed with the controversy involving this lease and other leases covering the land above described at this time for the want of material evidence, to-wit, the evidence of Robert Fish, the evidence of E. R. Kemp and the evidence of Charles Gibson, who are material witnesses in this case and whose attendance he has used due diligence to obtain at this hearing; that it is not possible to secure the attendance of all said witnesses before the hearing on Saturday, May 18, 1912. That the witness Charles Gibson resides at Eufaula, McIntosh County, Oklahoma, that the witness Robert Fish resides at Pierce, McIntosh County, Oklahoma, and that the witness E. R. Kemp resides at Tulsa, Oklahoma.

That he expects to prove by the witness Robert Fish that said Robert Fish is a Creek Indian, that at the request of E. C. Motter the said Robert Fish explained the affidavit on file in this case as an exhibit of this affiant, such explanation being given in the Creek language so that all the conditions of said affidavit were clearly understood by the said Eastman Richard before he signed the same; that the said Eastman Richard told the witness Robert Fish that the statements contained in said affidavit were true and correct and that after said explanation by said Robert Fish to the said Eastman Richard, the said Eastman Richard signed said affidavit in the presence of said Robert Fish.

He expects to prove the following facts by the witness Charles Gibson. That on or about the 12th day of April, 1912, said Charles Gibson met Roy Scales in Eufaula, McIntosh County, Oklahoma, and that the said Roy Scales told the witness Charles Gibson that he had "put one over on Eastman Richards" or words to that effect; that he (Scales) had sold the Eastman Richard lease to parties in another city and that he had made $600 clear money and very easy. He (Scales) said that he had lost no time in making $600 clear. This witness will testify that he told Eastman Richards what Scales had said to him and that Eastman Richards stated to the witness Charles Gibson that he had not received anything.

He states that the witness Kemp will testify as follows: That after the lease on file in the department from Eastman Richard to Gunsburg and the Southwestern Petroleum Company was taken and after the lease from Eastman Richard to the affiant was filed. One Ralph Hosteter, a party interested with the said Gunsburg and the Southwestern Petroleum Company interests, stated to the witness that he had purchased from Roy Scales for oil and gas mining purposes, a lease covering the land above described.

This affiant believes said statements to be true and states that this application for continuance is not made for delay but that justice may be done and he asks that this cause be continued until Saturday, May 18, 1912.

William J. Anicker.

Subscribed and sworn to before me this 14th day of May, 1912. Elina E. Klein,
(Seal) Notary Public.

My commission expires July 11, 1913.

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Affidavit—Eastman Richard. P&R

Office of Indian Affairs Received Jul 22 1912. Filed 73380. P&R

AFFIDAVIT.

*State of Oklahoma, McIntosh County*—ss. Apr. 12.

Personally appeared before me, L. C. Clark, a notary public in and for said county and state, Eastman Richard, of lawful age, who being first duly sworn by me alleges and states as follows:

That heretofore, to-wit, on the 29th day of November, 1911, I executed an oil and gas lease in favor of the Eastern Oil Company, covering my allotment in the Creek Nation, described as the northeast quarter of section five (5), township seventeen (17) north, range seven (7) east, for which I received a bonus in the sum of Eighty ($80.00) Dollars; that on the 20th day of March, 1912, I executed an oil and gas lease in favor of A. L. Funk and O. E. Riter, covering the east half of the northeast quarter of section five (5), township seventeen (17) north, range seven (7) east, being the east 80 acres of my said allotment in the Creek Nation; that on the 29th day of March, 1912, I executed an oil and gas lease in favor of William J. Anicker, covering the west half of the northeast quarter of section five (5), township seventeen (17) north, range seven (7) east, being the west 80 acres of my said allotment in the Creek Nation; that I received as a bonus for the execution of said oil and gas lease to said William J. Anicker the sum of Fifty ($50.00) Dollars, and with the further agreement that I would receive from the said William J. Anicker an additional sum of Three Hundred and Fifty ($350.00) Dollars upon approval of said lease by the Secretary of the Interior.

I further state that all of said leases, to-wit, that to the Eastern Oil Company, that to A. L. Funk and O. E. Riter, and that to William J. Anicker, were executed by me in good faith and for the considerations above mentioned.

That on the 29th day of March, 1912, I executed a declaration before Robert A. Zebold, a notary public in and for Muskogee County, State of Oklahoma, with reference to the execution of said leases, and in which I requested the cancelation of the lease executed by me in favor of the Eastern Oil Company, for the reason that said Eastern Oil Company had failed to file its lease for approval within the time limit of thirty days as required by the rules and regulations prescribed by the Secretary of the Interior for the approval of oil and gas leases.

I am now informed that since the execution of the aforementioned oil and gas lease in favor of William J. Anicker, and since the same was filed by him in the office of the United States Indian Superintendent at Muskogee, Oklahoma, a lease purporting to have been executed by me in favor of David Gunsburg and Southwestern Petroleum Company, covering the west half of the northeast quarter of section five (5), township seventeen (17) north, range seven (7) east, has been filed with the United States Indian Superintendent at Muskogee, Oklahoma, for approval by the Secretary of the Interior. That I am also informed that said lease was executed on the same day as the lease executed by me in favor of A. L. Funk and O. E. Riter, to-wit, the 20th day of March, 1912, and that both leases appear to have been acknowledged before the same notary public, and their execution witnessed by the same witnesses.

I now deny the execution of any oil and gas lease by me in favor of David Gunsburg and Southwestern Petroleum Company, and state that if my signature is affixed to any such lease, that the same was secured from me by false and fraudulent representations, and that if I signed such a lease and acknowledged the same before a notary public, as I am informed that I did, that my signature thereto and acknowledgment were procured by false and fraudulent representations. That I believe at the time of the execution of the lease to A. L. Funk and O. E. Riter that I was leasing only the east 80 acres of my allotment, and that I did not intend, nor did I understand, that I was signing a lease to any other of my lands.

I further state that I received no consideration from the said David Gunsburg and Southwestern Petroleum Company, nor from any person for them any consideration whatsoever for the execution of a lease on the west 80 acres of my said allotment.

I desire to state further that the lease executed by me in favor of William J. Anicker was executed in good faith in all respects, and for the consideration above set forth, and

that at the time of the execution of said lease I believed and so stated to the said William J. Anicker and in the presence of other witnesses, that I had not executed any lease in favor of any person covering the west 80 acres of my said allotment, except the lease executed by me in favor of the Eastern Oil Company, covering my entire allotment.

I, therefore, request that the lease to the Eastern Oil Company be disapproved, for the reason that the same was not filed within the time required by the rules and regulations of the Secretary of the Interior for the approval of such leases, and that the purported lease to David Gunsburg and Southwestern Petroleum Company be disapproved, for the reason that if the same appears to have been executed and acknowledged by me, and if the same was so executed and acknowledged by me, that my signature thereto was procured by false and fraudulent representations, and that I believed I was only executing a lease covering the east 80 acres of my allotment, which lease was executed in favor of A. L. Funk and O. E. Riter.

Eastman Richard.

Witness:
H. Van Smith,
Robert Fish.

Subscribed and sworn to before me, a notary public in and for said county and state, this 12th day of April, 1912.

(Seal) L. C. Clark,
My commission expires January 4, 1914. Notary Public.

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(Union Agency letter head.)

PLAINTIFF'S EXHIBIT "C" TO EXHIBIT "A" TO DEFENDANTS' AMENDMENT TO THEIR ANSWER TO PLAINTIFF'S AM. PETITION.

Kelsey's Report H 3 K 70 me P&R

Received Union Agency Sep 28 1912 Enclosure to No. 2930.

Office of Indian Affairs Received Jul 22 1912. File 73380

July 18, 1912.

Jul 20-1912-1912 C Respectfully forwarded recommending approval of this report Thos Ryan Acting Commissioner Five Tribes.

Lease: 22293, 22518, 22568, 22601. LMB—Enclosures.

Subject: Conflicting leases executed by Eastman Richard a Creek citizen.

The Honorable Commissioner of Indian Affairs:

Sir: There are respectfully submitted herewith a number of oil and gas mining leases covering lands in the Creek Nation, executed as follows:

No. 22293, Eastman Richard, full-blood Creek, lessor; Eastern Oil Company, lessee. Dated November 29, 1911, filed January 13, 1912, containing 160 acres allotted to said lessor. No removal of restrictions. Royalty 12½%. Collective bond, American Surety Company.

$80.00 Bonus paid lessor.

$720.00 Bonus held by cashier, credited April 9, 1912.

$24.00 Advance royalty held by cashier, credited January 13, 1912.

No. 22518, Eastman Richard, full-blood Creek, lessor; A. L. Funk and O. E. Riter, lessees. Dated March 20, 1912, filed March 22, 1912, containing 80 acres allotted to said lessor. No removal of restrictions. Royalty 12½%. Bond $1,500.00, Equitable Surety Company.

$80.00 Bonus held by cashier, credited March 22, 1912.

$520.00 Bonus held by cashier, credited May 28, 1912.

$12.00 Advance royalty held by cashier, credited March 22, 1912.

No. 22568, Eastman Richard, full-blood Creek, lessor; William J. Anicker, lessee. Dated March 28, 1912, filed March 30, 1912, containing 80 acres allotted to said lessor. No removal of restrictions. Bond $1,500.00, Southwestern Surety Insurance Company.

$50.00 Bonus paid lessor.

$750.00 Bonus held by cashier, credited June 1, 1912.

$12.00 Advance royalty held by cashier, credited March 30, 1912.

No. 22601, Eastman Richard, full-blood Creek, lessor; David Gunsburg & Southwestern Petroleum Company, lessee. Dated March 20, 1912, filed April 5, 1912, containing 80 acres allotted to said lessor. No removal of restrictions. Royalty 12½%. Bond $1,500.00, Equitable Surety Company.

$80.00 Bonus held by cashier, credited March 22, 1912.

$520.00 Bonus held by cashier, credited May 27, 1912.

$12.00 Advance royalty held by cashier, credited April 5, 1912.

The records of the Commissioner to the Five Civilized Tribes show that Eastman Richard, the lessor in the leases above described, is a full-blood Creek Indian citizen, and that the restrictions upon the alienation of the lands involved have not been removed.

You will observe that the leases Nos. 22568, William J. Anicker, lessee, and 22601, David Gunsburg & The Southwestern Petroleum Company, lessee, cover the same land, and that this land, together with that covered by lease No. 22518, in favor of A. L. Funk and O. E. Riter, are embraced in lease No. 22293, in favor of the Eastern Oil Company, which was the first lease executed by Eastman Richard.

The lease in favor of the Eastern Oil Company was not filed within thirty days of its execution, and on January 24, 1912, the company was advised of this and other deficiencies. On February 1, 1912, the lessee responded to this notice, with explanation of the delay in filing, stating that the consent of the lessor to its consideration would be furnished within a few days. The other deficiencies were supplied. On March 21, however, the office received a formal notification from Eastman Richard, dated March 20, 1912, stating that he had been asked to give his consent to the consideration of the lease, which he refused and still refused, and that he protested against the consideration of the lease.

On March 26, 1912, and April 9, 1912, communications were received from the Eastern Oil Company offering an additional bonus, remittance in the sum of $800 being tendered with its letter of April 9, 1912.

In the mean time, and on March 20, 1912, Eastman Richard executed lease No. 22518, to A. L. Funk and O. E. Riter, and No. 22601, in favor of David Gunsburg & The Southwestern Petroleum Company, which were filed with this office on March 22, and April 5, 1912, respectively, and on March 28, 1912, executed lease No. 22568 in favor of William J. Anicker, filed with this office on March 30, 1912, which lease covers the land embraced in the lease to Mr. Gunsburg and The Southwestern Petroleum Company.

On April 11, the office received a statement signed by Eastman Richard, dated April 10, 1912, requesting approval of the lease to the Eastern Oil Company, upon condition that said company pay "a greater bonus than any other lessee," and agreeing that any money tendered in connection with other leases should be refunded, and on April 19, the office received a petition from the attorney for Eastman Richard, signed by him, asking that a hearing be had at an early date, and that one of the leases upon his allotment be approved

upon payment of a reasonable bonus, and again agreeing to refund all moneys tendered under other leases.

A hearing was accordingly held, pursuant to notices to all the interested parties, on May 13, 1912, at which time a continuance was asked for, and a further hearing was had on May 14, 1912, when all parties were present or represented by attorneys.

On July 1, 1912, the office rendered its opinion in the matter of these conflicting leases, in which it is held that the lease in favor of the Eastern Oil Company should be disapproved because of its failure to file its lease within the thirty days allowed by the regulations, it being further held that the lessor's subsequent consent to the consideration of the lease could not be considered, in view of the intervening rights of other lessee's to whom he had given leases prior to the date of such consent; that lease No. 22568 to William J. Anicker should be disapproved because of the prior lease, No. 22601 in favor of David Gunsburg and The Southwestern Petroleum Company, and that lease No. 22518, in favor of A. L. Funk and O. E. Riter, and No. 22601, in favor of David Gunsburg & The Southwestern Petroleum Company, be approved.

On July 1, 1912, a copy of office opinion was forwarded to the attorneys for the lessor, and to each of the lessees, and they were advised that ten days would be allowed within which they might submit such statement or argument as they might desire, the same to be accompanied by evidence that notice thereof had been served on the other parties interested, and that at the end of the time designated, the leases with all papers, would be submitted to the Department for consideration and appropriate action.

On July 9, 1912, W. J. Anicker, by his attorneys, Roach and Bradley, filed with this office his Motion for Review and Notice of Appeal from the decision of this office of July 1, 1912, and on the same date a similar motion was filed by Butte, Boone and Lattimore, attorneys, on behalf of the Eastern Oil Company, the motions in each case being accompanied by evidence of service upon the other interested parties.

On July 10, 1912, Messrs. Butte, Boone and Lattimore filed with this office copy of its brief in the matter of these conflicting leases, and on July 15, 1912, filed receipts from the various parties interested, for the briefs served upon them.

On July 15, 1912, the motions for rehearing were argued by counsel, and after consideration were denied.

Counsel agrees that the case should be forwarded to the Department and that ten days' time should be allowed for preparing and serving briefs of appellants, and ten days additional for preparing and serving briefs for appellees. All briefs, with proof of service, to be filed directly with the Indian Office.

Lease No. 22518, described above, is the only lease filed in this office to date by A. L. Funk and O. E. Riter as co-partners, and the records of the office show that neither of them is in any manner interested in more than the maximum acreage of restricted lands. In Form B. submitted herewith, they state that they have had ten years experience in the oil business, are worth $30,000, the character of their resources not being indicated, and that they have at least $10,000 available for the development of this lease.

The records of the office show that both the lessees and the surety on their bond are in good standing as to settlement of accrued obligations under leases of restricted lands.

With their application for the approval of lease No. 22601, David Gunsburg and the Southwestern Petroleum Company state that they have been engaged exclusively in the oil business for the past five years; that they are worth, jointly, more than $100,000 and have a large income from oil productions and other resources, having drilled more than one hundred wells, and that they have at least $10,000 available for the development of this lease.

The records of the office show that neither Mr. Gunsburg nor any of the stockholders of the Southwestern Petroleum Company, are in any manner interested in more than the maximum acreage of restricted lands, while as co-partners they own departmental leases pending and in effect to the extent of approximately 1,300 acres, from one of which oil and gas is being reported. Both the lessees and the surety on their bond are shown by the records of the office to be in good standing as to settlement of claims for royalties accruing under leases of restricted lands.

The lessor appeared before a notary in this office and executed an affidavit in connection with each of these leases, stating that he fully understood the leases and desired their approval, and that a bonus of $80.00 had been agreed upon, for each lease, the amount being deposited with the Cashier of Union Agency, payable upon approval of the lease.

That all parties might be on an equal footing as to bonus, an investigation was made by the Oil Inspector, and from his

report it appears that a reasonable bonus for each lease was as follows:

No. 22293, Eastern Oil Company, 160 acres, Dated November 29, 1911 ..... $ 80.00

No. 22518, A. L. Funk and O. E. Riter, 80 acres, Dated March 20, 1912 ..... $600.00

No. 22568, William J. Anicker, 80 acres, Dated March 28, 1912 ..... $800.00

No. 22601, David Gunsburg and The Southwestern Petroleum Company, 80 acres ..... $600.00

and amounts sufficient to make the bonus required in each case were paid into this office, subject to the disposition of the Department, except in the case of the lease to the Eastern Oil Company, which bonus had been paid to the lessor direct, but in which case an additional bonus of $800.00 was deposited with this office.

In view of the fact above set out I respectfully recommend that lease No. 22293, in favor of the Eastern Oil Company and No. 22568, in favor of William J. Anicker be disapproved, that two parts of each disapproved lease be returned to this office; that the bond accompanying lease No. 22568 be also returned, for such disposition as the lessee may deem proper, and that R. Kessel, Cashier and Special Disbursing Agent for Union Agency, be granted authority to refund to the lessees the advance royalty and bonus tendered in connection with their respective leases, except that the advance royalty in lease No. 22293, to Eastern Oil Company, should be paid to the lessor, for the reason that said lease was not filed within thirty days, in accordance with the regulations. And I further respectfully recommend that leases Nos. 22518 in favor of A. L. Funk and O. E. Riter, and 22601 in favor of David Gunsburg & The Southwestern Petroleum Company, and the accompanying bonds, which appear to be properly executed and in conformity with the regulations of the Department, be approved.

Respectfully,

(Signed) DANA H. KELSEY,
*United States Indian Superintendent.*

Endorsed: Filed Oct. 3, 1913, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

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And, to-wit, on the 3rd day of October, A. D. 1913, the plaintiff filed Objections to Defendants' Amendment to An-

swer to Plaintiff's Amended Bill of Complaint, in words and figures as follows:

**Objections to Defendants' Amendment to Their Answer.**

Plaintiff objects to defendants' amendment to its defense which has said Exhibit "A" attached thereto, on the following grounds:

1. Because said defense does not state the particular mistake in the finding of fact alleged to have been made by the Secretary of the Interior and the way said mistake occurred.

2. Because it does not appear from said defense that by fraud or imposition of the plaintiff here the Secretary of the Interior prevented the defendants here from fully presenting their case or prevented the officers from fully considering it.

3. Because it does not appear from said defense that the defendants were in any manner precluded from drawing said alleged mistake to the attention of the Secretary of the Interior while said matter was pending before him.

4. Because it does not appear from said defense that the defendants have availed themselves of every remedy for the correction of said alleged error before the Interior Department, by motion for review or motion to correct said alleged error or by in any manner calling the attention of the Secretary of the Interior to said alleged error while said matter was pending before him, with a view to having the same corrected.

5. Because it appears from said defense and the record filed therewith as an Exhibit that the defendants are estopped to set up said alleged mistake of fact because they failed to seek the correction of the same while said matter was pending in the Interior Department.

6. Because it appears from said defense and the record filed therewith as an Exhibit that the defendants have accepted the benefits of said decision of the Secretary of the Interior which was in their favor, wherefore they are estopped to attack said decision by claiming that it was based wholly or in part upon a gross mistake of facts.

7. Because it appears that said decision now claimed to be based upon a gross mistake of facts in part is in force and effect and that the same was never complained of in the Interior Department by the defendants so that the said facts found therein are *res adjudicata* as against the defendants.

8. Because it appears from the original bill or petition in this case that the controversy is solely one over a Federal question of law and that the defendants have petitioned to remove this case from the State Court to this court upon said Federal question of law and they are now estopped to attempt to set up a controversy over facts the decision of which in their favor would oust the jurisdiction of this court invoked by them.

9. Because said matter is not responsive to any issue tendered by the bill.

ZEVELY GIVENS & STOUTZ,
J. B. FURRY,
*Attorneys for Plaintiff.*

Endorsed: Filed Oct. 3, 1913, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

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And, to-wit, on the 3rd day of October, A. D. 1913, the plaintiff filed Motion to Strike Amendment to Answer to Plaintiff's Amended Bill of Complaint, which is in words and figures as follows:

**Motion to Strike Defendants' Amendment to Answer to Plaintiff's Amended Petition.**

Plaintiff moves to strike defendants' last amendment to their defense, on the following grounds:

1. Because said defense does not state the particular mistake in the finding of fact alleged to have been made by the Secretary of the Interior and the way said mistake occurred.

2. Because it does not appear from said defense that by fraud or imposition of the plaintiff here the Secretary of the Interior prevented the defendants here from fully presenting their case or prevented the officers from fully considering it.

3. Because it does not appear from said defense that the defendants were in any manner precluded from drawing said alleged mistake to the attention of the Secretary of the Interior while said matter was pending before him.

4. Because it does not appear from said defense that the defendants have availed themselves of every remedy for the correction of said alleged error before the Interior Department, by motion for review or motion to correct said alleged error or by in any manner calling the attention of the Secretary of the Interior to said alleged error while said matter was pending before him, with a view to having the same corrected.

5. Because it appears from said defense and the record filed therewith as an exhibit that the defendants are estopped to set up said alleged mistake of fact because they failed to seek the correction of the same while said matter was pending in the Interior Department.

6. Because it appears from said defense and the record filed therewith as an exhibit that the defendants have accepted the benefits of said decision of the Secretary of the Interior which was in their favor, wherefore they are estopped to attack said decision by claiming that it was based wholly or in part upon a gross mistake of facts.

7. Because it appears that said decision now claimed to be based upon a gross mistake of facts in part is in force and effect and that the same was never complained of in the Interior Department by the defendants so that the said facts found therein are *res adjudicata* as against the defendants.

8. Because it appears from the original bill or petition in this case that the controversy is solely one over a Federal question of law and that the defendants have petitioned to remove this case from the State Court to this court upon said Federal question of law and they are now estopped to attempt to set up a controversy over facts the decision of which in their favor would oust the jurisdiction of this court invoked by them.

9. Because said matter is not responsive to any issue tendered by the bill.

ZEVELY, GIVENS & STOUTZ,
FURRY & MOTTER,
*Attorneys for Plaintiff.*

Endorsed: Filed Oct. 3, 1913, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

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And, to-wit, on the 3rd day of October, A. D. 1913, the following Order was made and entered in this cause:

**Order Granting Defendants Leave to Amend Their Amended Answer, and Sustaining Plaintiff's Motion to Strike Part of Defendants' Amended Answer.**

This cause came on for hearing on September 30th, 1913, the same being a regular day of the Term of Court at Muskogee, Honorable Ralph E. Campbell, regular Judge, presiding, (First) upon the motion of plaintiff for leave to file an amended petition, and said motion being considered, is allowed; (Second) the defendants thereupon filed instanter their answer to the plaintiff's amended petition; and, (Third) the

plaintiff filed a written motion to strike out certain defenses interposed by the defendants in their said answer to the plaintiff's amended petition; and, pending argument upon plaintiff's said motion, the defendants filed a written application for leave to amend their answer to plaintiff's amended petition, so as to allege that the undisputed evidence before the Department of the Interior showed that plaintiff, Anicker, did not purchase his lease on March 28th, 1912, without actual notice of the defendants' prior lease, and to allege that the evidence before the Department showed that the bonus of Four Hundred ($400.00) Dollars offered by the plaintiff was inadequate, and that the undisputed evidence before the Department in the contest over which lease should be approved by the Secretary showed that the plaintiff was not a *bona fide* purchaser of his lease, and that plaintiff did have actual notice of the defendants' prior lease, and with said amendment defendants proposed to file as Exhibit A thereto, a copy of the entire record before the Department of the Interior in said contest showing the evidence before the Department, the findings, reports and opinions of the various departmental officers, including the Secretary of the Interior, etc., to which plaintiff filed written objections, and, upon consideration of defendants' said motion for leave to further amend their answer to said amended petition and plaintiff's objections, the court allows said amendment, to which action of the court in allowing said amendment the plaintiff duly excepted at the time, and,

*It is therefore ordered and considered*, that defendants' answer to plaintiff's amended petition be further amended and considered as containing the allegations set forth in the motion of defendants in their application to amend, and,

*It is ordered*, that said amendment set forth in defendants' motion be considered as a part of the defendants' answer to the plaintiff's amended petition, to all of which the plaintiff duly excepted, and, thereupon, the plaintiff's written motion to strike out certain parts of the defendants' answer and test the sufficiency of certain defenses set forth in defendants' answer, came on for hearing, and after argument of counsel, and due consideration thereof, the court sustains the plaintiff's motion to strike out of the defendants' answer to plaintiff's amended petition, the eighth paragraph in defendants' answer pleading that the lease was unilateral, and also the ninth paragraph of the defendants' answer pleading ratification of the lease by the lessor, to which action of the court in sustaining plaintiff's motion striking out the eighth paragraph and the ninth paragraph of defendants' said answer, the defendants duly excepted at the time, and the court also overrules and disallows all of plaintiff's motion to strike

out the other parts of the answer, to which action of the court the plaintiff duly excepted separately with reference to the action of the court to each motion at the time; and,

It appearing to the court by stipulation of counsel for the respective parties that Exhibit A to the defendants' amendment to their answer to the plaintiff's amended petition has been withdrawn, and substituted therefor, those parts of the record before the Interior Department considered by the parties applicable under the ruling of the court upon said motion to strike certain parts of the defendants' answer, subject to plaintiff's original objections to the amendment to defendants' answer, and,

*It is hereby ordered*, that the defendants may treat the stipulation of counsel this day filed as a substitute for Exhibit A to defendants' amendment to their said answer, and plaintiff at all times excepted to action of the court in allowing the said amendment to defendants' answer.

*Made and ordered entered* this October 3rd, 1913.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Oct. 3, 1913, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

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And, to-wit, on the 11th day of October, A. D. 1913, the same being one of the days of the regular October, A. D. 1913, term of the United States District Court for the Eastern District of Oklahoma. Court met pursuant to adjournment at Ardmore, Oklahoma, Honorable RALPH E. CAMPBELL, Judge, presiding:

Among the proceedings had on this day is the following, to-wit:

**Final Decree.**

This cause came on for final hearing on this October 11th, 1913, the same being a regular day of the October, 1913, term of this court at Ardmore, Honorable Ralph E. Campbell, regular judge, presiding, upon the merits, whereupon counsel for plaintiff stated that in view of the court's previous rulings on plaintiff's motions to strike portions of defendant's answer to plaintiff's amended bill and "Exhibit A" attached to the amendment to defendants' answer to plaintiff's amended bill, and on plaintiff's objections to the filing of the amendment by defendants to their answer to plaintiff's amended bill, containing as an exhibit the record in the contest proceedings

before the Interior Department, and containing the evidence offered in said contest proceedings, and in view of the court's opinion heretofore announced on the questions of law involved herein, plaintiff submitted his case on his amended bill and the exhibits thereto attached, and the admissions contained in the answer of defendants; and, thereupon, defendants offered in evidence plaintiff's original petition and the written stipulation of counsel filed as "Exhibit A" to the amendment to their answer to the plaintiff's amended petition, with "Exhibits A" and "C" attached to and made a part of said stipulation of counsel filed as their "Exhibit A" to the said amendment.

Plaintiff objected to the introduction in evidence of the exhibits attached to the amendment to defendants' answer to plaintiff's amended bill, and particularly to that portion of said exhibit which purports to contain the evidence taken in the office of the United States Indian Superintendent at Muskogee, Oklahoma, in the contest proceedings between the parties hereto in said Department, on the ground that said testimony or evidence offered is incompetent and irrelevant, and for the further reason that the facts found by the Department of the Interior in said contest proceedings are conclusive on the court under the issues tendered by the bill, and for the reasons stated in plaintiff's written objection to the filing and allowance of amendment to defendants' answer to plaintiff's amended bill. Plaintiff's said objections were overruled by the court, and the said evidence offered by defendants was admitted by the court, to which the plaintiff duly excepted.

Plaintiff waived objection to the exhibits attached to defendants' amendment to their said answer on the ground that said exhibits were not properly certified, and agreed that said exhibits might be treated as though properly certified, but objected to the admissibility of the transcript of the evidence before the Department attached to defendants' said amendment to their answer, on the same ground as stated in the written objections interposed by plaintiff to the allowance of the amendment to said answer and the exhibits thereto attached, and on the further ground that said exhibits attached to defendants' answer and the amendment thereto are not competent, relevant or admissible upon the issues tendered by the amended bill of complaint and the answer thereto; the court then and there overruled each such objection, and the plaintiff duly excepted to each such ruling; whereupon, after argument of counsel and due consideration thereof, the court is of the opinion that the plaintiff's pleadings are fully met and overcome by the defendants' answers and amendment thereto, and not sustained by the evidence; and

*It is, therefore, ordered, considered and decreed* by the court that the plaintiff's original petition, and amended petition, and plaintiff's suit be dismissed, and plaintiff duly excepted thereto.

It appearing to the court that under a former order of this court made on the 12th day of March, 1913, denying the plaintiff's motion to appoint a receiver, the defendants were ordered and directed to execute and file in the record in this cause a bond in the sum of Fifty Thousand ($50,000.00) Dollars, running to the plaintiff as payee, with some surety or guaranty company authorized to do business in the Eastern District of Oklahoma acceptable to the court, conditioned that the defendants will, under such order and final decree as the court may make, account and pay to the plaintiff all such sums of money as the court may finally adjudge is due to and owing the plaintiff on account of the defendants' exploration, operation and development of the land described in the plaintiff's petition for oil and gas purposes, including all damages awarded the plaintiff on such final hearing; and

It appearing that in said order made on March 12th, 1913, it was provided and adjudged that the costs of the premium on such bond shall be taxed as costs in this case; and

It appearing to the court that defendants did, in compliance with said order, make and file a Fifty Thousand Dollar bond, and that the premium on said bond for one year cost the sum of Two Hundred Fifty ($250.00) Dollars, which defendants paid to the surety company;

*It is, therefore, ordered and adjudged*, that the plaintiff be, and is hereby, taxed with all the costs of this suit, including said sum of Two Hundred Fifty ($250.00) Dollars, as a part thereof, for which execution will issue, to all of which above judgment and decree, and each and every part thereof, the plaintiff duly excepted.

Made and ordered entered this 11th day of October, 1913.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Oct. 11, 1913, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

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And, to-wit, on the 30th day of March, A. D. 1914, the plaintiff, William J. Anicker, filed Petition for Allowance of Appeal, together with his Assignment of Errors, which Petition for Appeal was allowed by the court. Said Petition for

Allowance of Appeal, Assignment of Errors and Order Allowing Appeal are in words and figures as follows:

**Petition for Allowance of Appeal.**

*To the Honorable Ralph E. Campbell, Judge of the Above Named Court:*

The above named plaintiff, feeling himself aggrieved by the decree made and entered in this cause on the 11th day of October, 1913, does hereby, in open court, appeal from said decree and order to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and prays that his appeal be allowed, and that the transcript of the record, proceedings and papers upon which said decree and order were based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit, and that an order be made fixing the amount of security which plaintiff shall give and furnish upon such appeal, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said appeal by said United States Circuit Court of Appeals for the Eighth Circuit.

J. W. Zevely,
J. M. Givens,
R. W. Stoutz,
J. B. Furry,
*Solicitors for Plaintiff.*

The above and foregoing petition for appeal is granted and the appeal therein prayed for to the Circuit Court of Appeals for the Eighth Circuit is this day allowed in open court, and ordered that the bond on appeal be and is hereby fixed at the sum of Five Hundred and no/100 ($500.00) Dollars, same to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Done this 30 day of March, 1914.

Ralph. E. Campbell, *Judge.*

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*In the District Court of the United States for the Eastern District of Oklahoma.—William J. Anicker, Plaintiff,* v. *David Gunsburg and The Southwestern Petroleum Company, a Corporation, Defendants.*—Equity No. 1951.

Assignment of Errors.

Comes now the plaintiff in the above entitled cause, by his attorneys of record, and files herein the following assign-

ment of errors upon which he will rely as grounds of reversal in his appeal from the orders and decree of this court entered herein on the 11th day of October, 1913:

The court erred—

*First.*

In overruling plaintiff's motion filed October 1, 1913, to strike out portions of defendants' answer to plaintiff's amended bill, as shown by the order made and entered October 3, 1913.

*Second.*

In permitting defendants to file their amendment to defendants' answer to plaintiff's amended bill, and to attach thereto as exhibits the testimony taken and portions of the record before the United States Indian Superintendent at Muskogee, in the contest over approval of the leases between the parties to this action, as appears from the order made and entered on October 3, 1913, and the amendment to defendants' answer to plaintiff's amended bill filed on October 3, 1913.

*Third.*

In overruling plaintiff's objections, filed October 3, 1913, to defendants' amendment to their answer, and in overruling plaintiff's motion, filed October 3, 1913, to strike defendants' amendment to their answer to plaintiff's amended bill, with the exhibits thereto attached, as appears from the order made and entered October 3, 1913.

*Fourth.*

In permitting defendants to introduce in evidence on final submission of this cause plaintiff's original bill, and in permitting defendants to introduce in evidence written stipulaton of counsel filed as "Exhibit A" to the amendment to defendants' answer to plaintiff's amended bill, and Exhibits "A" and "C" attached to said stipulation of counsel filed as defendants' "Exhibit A" to said amendment.

*Fifth.*

In rendering judgment and decree that plaintiff's suit be dismissed, and in rendering judgment in favor of defendants against the plaintiff in costs, as appears from the final decree made and entered October 11, 1913.

*Sixth.*

In holding that the recording laws (Sections 670 and 671 of Mansfield's Digest of Arkansas) put in force in the Indian

Territory by Act of Congress of February 19, 1903, and the recording laws of the State of Oklahoma, and the Acts of Congress of March 1, 1907, and Section 20 of the Act of Congress of April 26, 1906, referred to in plaintiff's bill, did not apply to the leases in controversy in this case, nor control the Secretary of the Interior in the discharge of his duty in approving or disapproving leases under the Act of Congress of May 27, 1908.

*Seventh.*

In holding that the Secretary of the Interior had plenary power to approve or disapprove leases uncontrolled by existing Congressional legislation bearing thereon enacted prior to the Act of May 27, 1908.

*Eighth.*

In holding in substance and fact that neither the United States Indian Superintendent nor the Secretary of the Interior made any findings of facts as to the qualification of plaintiff as the lessee, and in further holding that because the Secretary of the Interior did not make any such finding, no court can review the Secretary's action with reference thereto.

*Ninth.*

In holding that plaintiff's amended bill fails to state facts sufficient to constitute a cause of action in favor of plaintiff and against the defendants, and that the "fourth paragraph" and the "fifth paragraph" of defendant's answer to plaintiff's amended bill state good and sufficient defenses to plaintiff's amended bill.

*Tenth.*

In construing the following regulation of the Secretary of the Interior:

> "All leases shall be in quadruplicate, and all the papers required shall be filed within thirty days from and after the date of execution by the lessor with the United States Indian Agent at Union Agency, Muskogee, Oklahoma,"

to be, in effect, a permission to lessees to withhold their leases for a period of thirty days from their execution, during which time subsequent lessees in good faith may not acquire any superior right, thereby making such regulation conflict with and override the laws of Congress with reference to the filing and recording of leases, and the recording acts in force in the State of Oklahoma relating to the filing and recording of instruments affecting real estate.

*Eleventh.*

In holding that under the issues tendered by plaintiff's amended bill it was proper and competent for the court to consider the evidence submitted before the Department in the contest over the leases involved in this action, and to make findings of fact based on the record of the evidence before the Department of the Interior.

*Wherefore*, plaintiff prays that said decree be reversed, and that the Circuit Court of Appeals for the Eighth Circuit render such decree and final judgment as will give to the plaintiff the relief prayed for in his bill.

J. W. ZEVELY, J. M. GIVENS,
R. W. STOUTZ, J. B. FURRY,
*Attorneys for Plaintiff.*

Endorsed: Filed Mar. 30, 1914, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

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And, on the same day, to-wit, the 30th day of March, A. D. 1914, the plaintiff filed his Appeal Bond, in words and figures as follows:

**Bond on Appeal.**

*Know All Men By These Presents:*

That we, William J. Anicker, as principal, and Southwestern Surety Insurance Company, of Denison, *Oklahoma*, as surety, are held and firmly bound unto David Gunsburg and The Southwestern Petroleum Company, a corporation, in the full and just sum of Five Hundred ($500.00) Dollars, to be paid to said David Gunsburg and The Southwestern Petroleum Company, their heirs, executors, administrators, successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors or assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of March, A. D. 1914.

*Whereas*, lately, at the October, 1913, term of the District Court of the United States for the Eastern District of Oklahoma, in a suit pending in said court between William J. Anicker, plaintiff, and David Gunsburg and The Southwestern Petroleum Company, a corporation, defendants, a decree was rendered against the said plaintiff, and the said plaintiff has obtained an appeal to the United States Circuit Court of Appeals for the Eighth Circuit to reverse the said decree in the

aforesaid suit, and a citation directed to the said David Gunsburg and The Southwestern Petroleum Company, citing and admonishing them to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Paul, Minnesota, sixty (60) days from and after the date of said citation; now the condition of the above obligation is such that if said William J. Anicker shall prosecute said appeal to effect and answer to all damages and costs, if he fail to make good his plea, the above obligation to be void; else, to remain in full force and virtue.

WILLIAM J. ANICKER, *Principal.*

(Seal) SOUTHWESTERN SURETY INSURANCE COMPANY, *Surety,*
By M. L. BRAGDON, *Attorney-in-Fact.*

Approved March 30, 1914, RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Mar. 30, 1914, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

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**Citation.**

*The United States of America, To David Gunsburg and The Southwestern Petroleum Company, a Corporation, Greeting:*

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Paul, Minnesota, sixty (60) days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the District Court of the United States for the Eastern District of Oklahoma, wherein William J. Anicker is appellant and you are appellees, to show cause, if any there be, why the decree rendered against said appellant as in said appeal mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Ralph E. Campbell, Judge of the District Court of the United States for the Eastern District of Oklahoma, this 30 day of March, A. D. 1914.

RALPH E. CAMPBELL,

*Judge of the United States District Court for the Eastern District of Oklahoma.*

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Service of the within and foregoing citation acknowledged and accepted this 30th day of March, A. D. 1914.

DAVID GUNSBURG and
THE SOUTHWESTERN PETROLEUM COMPANY, a Corporation,
*Defendants.*

By GEO S. RAMSEY,
C. L. THOMAS,
ROBT. J. BOONE,
*Their Solicitors.*

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**Praecipe and Election as to Printing Record.**

*To the Honorable R. P. Harrison, Clerk of the Above Named Court:*

William J. Anicker, appellant herein, hereby elects to have the transcript of the record in the above entitled cause printed under the supervision of the Clerk of the United States District Court for the Eastern District of Oklahoma, and respectfully requests that said transcript in this cause be printed as required by law under this election, and you are requested to make a transcript of the record in the above entitled cause to be printed under the supervision of the Clerk of the United States District Court at Muskogee, Oklahoma, and filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to appeal allowed in said cause, and to include in said transcript of record the following, and no other papers or exhibits:

(1) Stipulation of counsel as to certain parts of the record, approved by the court on the.....day of March, 1914;

(2) Amended petition and exhibits thereto;

(3) Defendants' answer to plaintiff's amended petition;

(4) Plaintiff's motion filed October 1, 1913, to strike portions of defendants' answer to plaintiff's amended petition;

(5) Defendants' amendment to their answer to plaintiff's amended petition, with exhibits attached;

(6) Plaintiff's objections, filed October 3, 1913, to defendants' amendment to answer to amended petition;

(7) Plaintiff's motion, filed October 3, 1913, to strike defendants' amendment to answer to plaintiff's amended petition;

(8) Journal entry of orders made and filed October 3, 1913;

(9) Final decree of October 11, 1913;

(10) Petition for appeal and order allowing same;

(11) Assignment of errors;

(12) Appeal bond and approval of same;

(13) Citation and acceptance of service thereof;

(14) Election for printing record and praecipe;

(15) Acceptance of service of praecipe and election for printing record.

J. W. ZEVELY, J. M. GIVENS,
R. W. STOUTZ, J. B. FURBY,
*Solicitors for Plaintiff.*

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We, the undersigned, solicitors for defendants, David Gunsburg and The Southwestern Petroleum Company, do hereby acknowledge receipt of the above designation of the parts of the record necessary for the consideration of the errors assigned by William J. Anicker, plaintiff in the above entitled cause, and waive the designation of any further part or parts of the record, and agree that the above includes all the portions of such record material or necessary for the consideration of the errors assigned by the plaintiff, William J. Anicker, and hereby accept service of the same and service of the above election as to printing the record.

Dated this 24th day of March, 1914.

GEO. S. RAMSEY,
C. L. THOMAS,
R. J. BOONE,
*Solicitors for Defendants.*

Endorsed: Filed Mar. 30, 1914, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

**Certificate of Clerk.**

*United States of America, Eastern District of Oklahoma*—ss.

I, R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of *William J. Anicker* v. *David Gunsburg et al.*, No. 1951, Equity, as was ordered by praecipe of counsel herein to be prepared and authenticated as the same appears from the records in my office.

I do further certify that the original Citation, with service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof, I have hereunto set by hand and affixed the seal of the said court at my office, in the City of Muskogee, Oklahoma, this.....day of....., 1914.

R. P. Harrison, *Clerk.*

By

*Deputy.*

And thereafter certain proceedings were had in the Circuit Court of Appeals in said cause, of which the following are included in this transcript pursuant to the præcipe of counsel for Appellant and consent thereto by counsel for Appellees.

(*Opinion.*)

United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1915.

No. 4228.

WILLIAM J. ANICKER, Appellant,
vs.
DAVID GUNSBURG and THE SOUTHWESTERN PETROLEUM COMPANY, a Corporation, Appellees.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

Mr. J. B. Furry and Mr. R. W. Stoutz (Mr. J. W. Zevely, Mr. J. M. Givens and Mr. E. C. Motter, were with them on the brief), for appellant.

Mr. George S. Ramsey (Mr. Edgar A. de Meules, Mr. John M. Chick and Mr. R. J. Boone, were with him on the brief), for appellees.

Before Hook and Carland, Circuit Judges, and Amidon, District Judge.

AMIDON, *District Judge*, delivered the opinion of the Court.

This suit involves conflicting claims under two successive oil and gas leases on eighty acres of land, made by one Richards, a full-blood Creek. The Indian executed a lease of the property in favor of Gunsburg, on March 20, 1912, which was filed April 5, 1912. He executed a lease on the same property to Anicker, on March 28, which was filed March 30. It will thus be seen that the Gunsburg lease is prior in date and was filed within thirty days from the date of its execution; whereas the Anicker lease is subsequent in date, but was filed prior to the filing of the Gunsburg lease. The rule of the Department on the subject is as follows: "All leases shall be in quadruplicate, and, with the papers required, shal be filed within thirty days from and after the date of execution by the lessor with the United States Indian Agent at Union Agency, Muskogee, Oklahoma." Under this rule it has been the practice of the Department to hold that during the thirty-day period mentioned in the rule, priority of the date of execution of a lease rather than priority of date of filing, determines priority of right. This, it will be seen, fails to give a controlling effect to the registry laws as to the inchoate rights created by an oil and gas lease, signed by the Indian, but not approved by the Secretary of the

Interior. A hearing was had before the United States Indian Superintendent at Muskogee, in respect to these two leases, and two other conflicting leases, covering the same property. The parties appeared and were fully heard, and the Superintendent recommended that the Gunsburg lease be approved. The matter was again heard before the Secretary of the Interior, and upon application of Anicker a rehearing was granted. The holding of all these officers was that the Gunsburg lease ought to be approved by the Secretary of the Interior, and it was so approved. Anicker, claiming that the approval of the Secretary was the result of a clear mistake of law, brought this suit in equity against Gunsburg, and asks that he be decreed to hold all the right which he acquired under the lease in trust for Anicker, and be required to execute an assignment of the lease to him. The trial court dismissed the bill, and Anicker appeals.

Section 20 of the Act of April 26, 1906 (34 Stat. at Large, 145), provides that "all leases and rental contracts, except leases and rental contracts for not exceeding one year, for agricultural purposes, for lands other than homesteads, and of full-blood allottees of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes, shall be in writing, and subject to approval by the Secretary of the Interior, and shall be absolutely void and of no effect without such approval: Provided, that all leases entered into for a period of more than one year, shall be recorded in conformity to the law applicable to recording instruments now in force in said Indian Territory."

Section 2 of the Act of May 27, 1908 (35 Stat. at Large, 312), provides: "That leases of restricted lands for oil, gas, or other mining purposes, * * * may be made with the approval of the Secretary of the Interior under rules and regulations approved by the Secretary of the Interior, and not otherwise.

The Act of March 1, 1907 (34 Stat. at Large, 1026), provides as follows: "The filing heretofore or hereafter of any lease in the office of the United States Indian Agent, Union Agency, Muskogee, Indian Territory, shall be deemed constructive notice."

These are the statutory provisions which have a bearing on the case. Anicker insists that the provisions requiring such instruments to be filed, make it the legal duty of the Secretary of the Interior to approve his lease, in preference to the Gunsburg lease. We think this contention is unsound for two reasons: First, whatever may be the effect of the registry provisions in regard to these inchoate leases prior to their approval by the Secretary of the Interior, that effect is confined to imparting notice to parties dealing with the property, and has no bearing whatever upon the discretion which the law grants to the Secretary of the Interior in his guardianship over the Indians. Second, because the rule invoked by plaintiff that a patent for public lands issued through a clear mistake of law or fact, will be held to create a trust in favor of the party justly entitled to the land, has no proper application to the approval of gas and oil leases by the Secretary of the Interior. That is so because there are no acts specified in any law by the doing of which any person can acquire a legal right to the approval of such a lease. The whole subject, on the other

hand, is left in the field of bargain and contract, and the Secretary of the Interior, in exercising this discretion, as the guardian of the Indians, has all the freedom which a private person would possess in respect of such a contract. The statute requires him to make rules and regulations for the guidance of parties seeking such leases, and to the extent that such rules and regulations are made the discretion of the Secretary of the Interior is restricted, but not otherwise. The difference between the approval of these oil and gas leases, and the issuance of patents for public lands, is clear. Take for example the homestead law. Under it persons possessing certain qualifications may do certain specific acts, such as filing, residence, and making improvement, and by doing these acts the homestead law provides that the entryman shall acquire a right to a patent for the land. It is the function of the officials of the land department in administering these laws to ascertain whether entrymen have complied with their provisions. If, notwithstanding such compliance, a patent is issued to another person, by a clear mistake of law, or a gross mistake of fact, the holder of such a patent may be decreed to be a trustee for the party to whom the patent should have been issued. In the case of gas and oil leases, on the other hand, the law does not specify any acts by the doing of which a party can acquire a legal right to the approval of the Secretary of the Interior. While that officer cannot initiate a lease, his approval is really the dominant factor in the making of such instruments. The evidence in this case leaves no room for doubt about the wisdom of the statute which gives him this power. The Indian is wholly incapable of disposing of the valuable rights which are frequently involved in such leases. The real investigation must be made by officers of the government. Otherwise the rights of the Indian would be frequently sacrificed.

The rule of the Department giving thirty days for the filing of leases at the Indian Agency has been in force for many years. It is well understood. As the Secretary of the Interior states in his opinion, "It is suited to the conditions in which the oil and gas leasing business is carried on. In very many cases a considerable time is required after the signature of a lessor is obtained for the execution by the lessee, and making of the bond and other papers. The Secretary, in the exercise of the power vested in him by law, has given thirty days for this purpose. The only inconvenience which may follow the enforcement of the rule is where some enterprising person in keen competition to secure a promising piece of land, induces an allottee to execute a lease to him, after he has already leased it to another; and, having filed his lease at the Agency, is subsequently informed that the lease executed prior to his has been duly filed and takes precedence." The final word of the Secretary of the Interior is as follows: "Until approved by the Secretary, the lease was not a completed instrument, and the fact of its having been recorded in a county office cannot estop the Secretary from finding that another lease regularly executed and filed, is more for the allottee's interest, and better entitled to approval." These views of the Secretary of the Interior embody administrative experience and seem to us to be sound.

Plaintiff relies much upon our opinion in Shulthis v. McDougal, 170 Fed. 529. The lease there was executed by an Indian by the name of Berryhill. About a month after he executed the lease a statute was passed which gave him unrestricted power to convey his property. Acting under this power he executed a deed for the property upon the consideration of $2,000. About a year later the holder of the lease secured its approval by the Secretary of the Interior, and then sought by an application of the doctrine of relation to have his lease given priority over the deed. We held that the registration law precluded him from thus defeating the deed. This is clearly an application of the registry law to conflicting claims on the part of private individuals, and has nothing to do with the discretion vested in the Secretary of the Interior in regard to approving oil and gas leases. By a familiar rule, what is said in the opinion in regard to the registry law must be confined to the question that was actually before the court.

In our judgment the present case falls clearly within the rule which was enforced in the case of United States v. Hitchcock, 205 U. S. 80. The discretion of the Secretary of the Interior there was no more controlling than it is here. The mere fact that the Superintendent of the Agency, and the Secretary of the Interior gave their reasons for deciding in favor of the Gunsburg lease, did not impair the broad discretion which the law grants to the Secretary of the Interior.

The decision is Affirmed.

Filed August 4, 1915.

*(Decree.)*

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1915.

No. 4228.

WILLIAM J. ANICKER, Appellant,
vs.
DAVID GUNSBURG and THE SOUTHWESTERN PETROLEUM COMPANY, a Corporation.

Appeal from the District Court of the United States for the Eastern District of Oklahoma

MONDAY, August 23, 1915.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that David Gunsburg and The Southwestern Petroleum Company, a cor-

poration, have and recover against William J. Anicker the sum of twenty dollars for their costs herein and have execution therefor.

August 23, 1915.

*(Petition for Appeal to Supreme Court, U. S.)*

The above named appellant, William J. Anicker, respectfully shows to the court that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Eighth Circuit and that a judgment or decree has therein been rendered on the 23rd day of August, 1915, affirming the decree of the District Court of the United States for the Eastern District of Oklahoma, and that the matter in controversy in said suit exceeds $3,000, besides interest and costs; that this cause is an equity cause and one in which the United States Circuit Court of Appeals for the Eighth Circuit has not final jurisdiction and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal from said United States Circuit Court of Appeals for the Eighth Circuit.

Appellant Anicker further shows that the appellee David Gunsburg is dead and that he died since the rendition of the decree of the United States Circuit Court of Appeals for the Eighth Circuit now being appealed from, and that he has no proper or personal representative within the jurisdiction of this the United States Circuit Court of Appeals for the Eighth Circuit, so that this suit cannot be revived in this court, but there has been appointed in the Surrogates Court at Buffalo, in the state of New York, administrators of the estate of said David Gunsburg, who are Bertha H. Gunsburg, 152 Lincoln Parkway, Buffalo, New York, Ralph Hochstetter, 152 Lincoln Parkway, Buffalo, New York, and Walter P. Cooke, 155 Summer Street, Buffalo, New York.

Wherefore said appellant prays that an appeal be allowed him in the above entitled cause directing the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit to send the record and proceedings in said cause with all things concerning the same to the Supreme Court of the United States in order that the error complained of in the assignment of errors herewith filed by said appellant may be reviewed and if error be found corrected according to the laws and customs of the United States.

FRANK HAGERMAN,
J. W. ZEVELY,
J. M. GIVENS,
R. W. STOUTZ,
J. B. FURRY, AND
E. C. MOTTER,
*Attorneys for Appellant, William J. Anicker.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 27 1916.

*(Assignment of Errors on Appeal to Supreme Court U. S.)*

The appellant in the above entitled cause, in connection with his petition for appeal herein, does hereby present and file herewith his assignment of errors as to the matters and things which this appellant says the decree in the United States Circuit Court of Appeals for the Eighth Circuit rendered on the 23rd day of August, 1915, is erroneous, to-wit:

First.

Said United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the decree of the District Court of the United States for the Eastern District of Oklahoma in overruling plaintiff's motion filed October 1, 1913, to strike out portions of defendant's answer to plaintiff's amended bill, as shown by the order made and entered October 3, 1913.

Second.

Said United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the decree of the District Court of the United States for the Eastern District of Oklahoma in permitting defendants to file their amendment to defendants' answer to plaintiff's amended bill, and to attach thereto as exhibits the testimony taken and portions of the record before the United States Indian Superintendent at Muskogee, in the contest over approval of the leases between the parties to this action, as appears from the order made and entered on October 3, 1913, and the amendment to defendants' answer to plaintiff's amended bill filed on October 3, 1913.

Third.

Said United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the decree of the District Court of the United States for the Eastern District of Oklahoma in overruling plaintiff's objections, filed October 3, 1913, to defendants' amendment to their answer, and in overruling plaintiff's motion, filed October 3, 1913, to strike defendants' amendment to their answer to plaintiff's amended bill, with the exhibits thereto attached, as appears from the order made and entered October 3, 1913.

Fourth.

Said United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the decree of the District Court of the United States for the Eastern District of Oklahoma in permitting defendants to introduce in evidence on final submission of this cause plaintiff's original bill, and in permitting defendants to introduce in evidence written stipulation of counsel filed as "Exhibit A" to the amendment to defendants' answer to plaintiff's amended bill, and Exhibits "A" and "C" attached to said stipulation of counsel filed as defendant's "Exhibit A" to said amendment.

### Fifth.

Said United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the decree of the District Court of the United States for the Eastern District of Oklahoma in rendering judgment and decree that plaintiff's suit be dismissed, and in rendering judgment in favor of defendants against the plaintiff in costs, as appears from the final decree made and entered October 11, 1913.

### Sixth.

Said United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the decree of the District Court of the United States for the Eastern District of Oklahoma in holding that the recording laws (Sections 670 and 671 of Mansfield's Digest of Arkansas) put in force in the Indian Territory by Act of Congress of February 19, 1903, and the recording laws of the State of Oklahoma, and the Acts of Congress of March 1, 1907, and Section 20 of the Act of Congress of April 26, 1906, referred to in plaintiff's bill, did not apply to the leases in controversy in this case, nor control the Secretary of the Interior in the discharge of his duty in approving or disapproving leases under the Act of Congress of May 27, 1908.

### Seventh.

Said United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the decree of the District Court of the United States for the Eastern District of Oklahoma in holding that the Secretary of the Interior had plenary power to approve or disapprove leases uncontrolled by existing Congressional legislation bearing thereon enacted prior to the Act of May 27, 1908.

### Eighth.

Said United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the decree of the District Court of the United States for the Eastern District of Oklahoma in holding in substance and fact that neither the United States Indian Superintendent or the Secretary of the Interior made any findings of facts as to the qualification of plaintiff as the lessee, and in further holding that because the Secretary of the Interior did not make any such finding, no court can review the Secretary's action with reference thereto.

### Ninth.

Said United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the decree of the District Court of the United States for the Eastern District of Oklahoma in holding that plaintiff's amended bill fails to state facts sufficient to constitute a cause of action in favor of plaintiff and against the defendants, and that the "fourth paragraph" and the "fifth paragraph" of defendant's answer to plaintiff's amended bill state good and sufficient defenses to plaintiff's amended bill.

Tenth.

Said United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the decree of the District Court of the United States for the Eastern District of Oklahoma in construing the following regulation of the Secretary of the Interior:

"All leases shall be in quadruplicate, and all the papers required shall be filed with in thirty days from and after the date of execution by the lessor with the United States Indian Agent at Union Agency, Muskogee, Oklahoma,"

to be, in effect, a permission to lessees to withhold their leases for a period of thirty days from their execution, during which time subsequent lessees in good faith may not acquire any superior right, thereby making such regulation conflict with and override the laws of Congress with reference to the filing and recording of leases, and the recording acts in force in the State of Oklahoma relating to the filing and recording of instruments affecting real estate.

Eleventh.

Said United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the decree of the District Court of the United States for the Eastern District of Oklahoma in holding that under the issues tendered by plaintiff's amended bill it was proper and competent for the court to consider the evidence submitted before the Department in the contest over the leases involved in this action, and to make findings of fact based on the record of the evidence before the Department of the Interior.

Wherefore, this appellant, William J. Anicker, prays that the decree of the said United States Circuit Court of Appeals for the Eighth Circuit and the decree of the United States District Court for the Eastern District of Oklahoma may be reversed and that this, the Supreme Court of the United States, render such decree and final judgment as will give to the plaintiff appellant the relief prayed for in his bill.

FRANK HAGERMAN,
J. W. ZEVELY,
J. M. GIVENS,
R. W. STOUTZ,
J. B. FURRY, AND
E. C. MOTTER,
*Attorneys for Appellant, William J. Anicker.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 27, 1916.

(*Bond on Appeal to Supreme Court U. S.*)

Know All Men By These Presents, That We, William J. Anicker, as appellant, and Southern Surety Co., as surety, are held and firmly bound unto the above named appellees David Gunsburg and South-

western Petroleum Company, a corporation, in the sum of $500.00, to be paid to them, for the payment of which, well and truly to be made, we bind ourselves and each of us and our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 10th day of April, 1916.

Whereas, the above named appellant William J. Anicker has prosecuted his appeal to the Supreme Court of the United States to reverse the decree and judgment of the United States Circuit Court of Appeals for the Eighth Circuit made and entered in the United States Circuit Court of Appeals for said Eighth Circuit on the 23rd day of August, 1915, affirming a decree of the United States District Court for the Eastern District of Oklahoma.

Now, therefore, the condition of this obligation is such that if the above named appellant shall prosecute said appeal to effect and answer all damages and costs if he fails to make said appeal good then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

WILLIAM J. ANICKER,
SOUTHERN SURETY COMPANY,
By W. F. MOFFATT,
*Attorney-in-fact.* [SEAL.]

Approved this 25th day of April, 1916.

WILLIAM C. HOOK,
*United States Circuit Judge*
*for the Eighth Circuit.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 27, 1916.

(*Order Allowing Appeal to Supreme Court U. S.*)

It is hereby ordered that the appeal in the above entitled cause to the Supreme Court of the United States be and is hereby allowed as prayed.

WILLIAM C. HOOK,
*United States Circuit Judge*
*for the Eighth Circuit.*

April 25, 1916.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 27, 1916.

In the United States Circuit Court of Appeals for the Eighth Circuit.

No. 4228.

WILLIAM J. ANICKER, Appellant,
vs.
DAVID GUNSBURG and SOUTHWESTERN PETROLEUM COMPANY, a Corporation, Appellees.

*Citation.*

The President of the United States to David Gunsburg and his personal representatives and Southwestern Petroleum Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof pursuant to an appeal allowed and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in cause No. 4228, upon the docket of the said United States Circuit Court of Appeals for the Eighth Circuit wherein William J. Anicker is appellant and you are appellees to show cause, if any there be, why the decree rendered against said appellant, as is in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States Supreme Court this 25th day of April, 1916.

WILLIAM C. HOOK,
*United States Circuit Judge.*

Service of the within and foregoing Citation acknowledged and accepted by us this 20 day of April, 1916.

GEO. S. RAMSEY,
EDGAR A. DE MEULES,
*Counsel for Appellees.*

[Endorsed:] No. 4228. William J. Anicker, Appellant, vs. David Gunsburg, and Southwestern Petroleum Co., a corporation. Citation on Appeal to Supreme Court, U. S. Filed Apr. 27 1916. John D. Jordan, Clerk. Zevely, Givens & Stoutz, Attorneys, Muskogee, Oklahoma.

(*Praecipe for Transcript on Appeal to Supreme Court U. S.*)

William J. Anicker, the appellant herein, hereby requests the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit to incorporate into the transcript of the record in this cause to be printed for the use of the United States Supreme Court the following, and no other papers or exhibits:

1. The printed record in this cause as filed in the United States Circuit Court of Appeals for the Eighth Circuit.

2. The opinion of the United States Circuit Court of Appeals for the Eighth Circuit rendered in this cause.

3. The judgment of affirmance rendered by the United States Circuit Court of Appeals for the Eighth Circuit.

4. Appellant's petition for appeal filed in this court together with order of the Circuit Judge who allowed the same.

5. The bond for this appeal filed by the appellant in this court.

6. The assignments of error filed by the appellant with his said petition for appeal.

7. The citation issued by the clerk upon said appeal.

8. This praecipe for printing record with acceptance of service thereon.

9. Certificate of the Clerk of the United States Circuit Court of Appeals to the said record.

This appellant shows that there has been filed with the Clerk of the United States Circuit Court of Appeals a sufficient number of copies of the record on said appeal in the said United States Circuit Court of Appeals to dispense with printing anew the record so used in the United States Circuit Court of Appeals for the Eighth Circuit.

FRANK HAGERMAN,
J. W. ZEVELY,
J. M. GIVENS,
R. W. STOUTZ,
J. B. FURRY, AND
E. C. MOTTER,
*Attorneys for Appellant.*

We, the undersigned, solicitors for appellees, David Gunsburg, and his personal representatives, and Southwestern Petroleum Company, do hereby acknowledge receipt of the above designation of the parts of the record necessary for the consideration of the errors assigned by William J. Anicker, appellant in the above entitled cause, and waive the designation of any further part or parts of the record, and agree that the above includes all the portions of such record material or necessary for the consideration of the errors assigned by the appellant, William J. Anicker, and hereby accept service of the same and service of the above election as to printing the record.

Dated this 20th day of April, 1916.

GEO. S. RAMSEY AND
EDGAR A. DE MEULES,
*Solicitors for David Gunsburg and His Personal Representatives and Southwestern Petroleum Company.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 27, 1916.

*(Clerk's Certificate.)*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed and certified by the Clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the Act of Congress, approved February 13, 1911, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, called for in the præcipe filed by counsel for Appellant and the consent of Appellees thereto, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein William J. Anicker is Appellant and David Gunsburg and Southwestern Petroleum Company, a corporation, are Appellees, No. 4228, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acknowledgment of service endorsed thereon is hereto attached and herewith returned.

I do further certify that on the twenty-fifth day of October, A. D. 1915, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the Judges of the District Court of the United States for the Eastern District of Oklahoma.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this third day of May, A. D. 1916.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
*Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.*

[United States documentary stamp, series of 1914, ten cents, canceled May 8, 1916. John D. Jordan.]

Endorsed on cover: File No. 25,291. U. S. Circuit Court of Appeals, 8th Circuit. Term No. 1008. William J. Anicker, appellant, vs. David Gunsburg and Southwestern Petroleum Company. Filed May 12th, 1916. File No. 25,291.